

United States
Circuit Court of Appeals
For the Ninth Circuit.

JUNG QUEY alias SAM KEE, LI CHEUNG, MON
HING and JT YEE,
Plaintiffs in Error,
vs.

UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the
Northern District of California, First Division.

Filed

JAN 28 1915

F. D. Monckton,
Clerk.

United States
Circuit Court of Appeals

For the Ninth Circuit.

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HING and JT YEE,

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INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

	Page
Additional Assignments of Error.....	139
Assignments of Error	132
Bill of Exceptions of Proceedings Had Upon the Trial of the Cause.....	23
Bond on Writ of Error.....	148
Certificate of Clerk to Transcript on Writ of Error	152
Charge to the Jury.....	90
Citation on Writ of Error.....	155
Demurrer of Defendant, Jung Quey, alias Sam Kee, to Indictment.....	9
Demurrer of Defendants Li Cheung and Yick Fat to Indictment.....	10
Demurrer of Defendants Mon Hing and Yt Yee to Indictment	12
Impanelment of Jury, etc.....	15
Indictment	2
Instructions Requested on Behalf of Defend- ants	105
Judgment on Verdict of Not Guilty on the First Count of the Indictment, and Guilty on the Second Count of the Indictment.....	127
Minutes of Trial—June 10, 1914.....	15

Index.	Page
Minutes of Trial—June 11, 1914.....	19
Minutes of Trial—June 12, 1914.....	20
Motion for a New Trial of Defendant Jung Quey	117
Motion for a New Trial of Defendant Li Cheung	118
Motion for a New Trial of Defendant Mon Hing	119
Motion for a New Trial of Defendant Yt Yee..	120
Motion in Arrest of Judgment of Defendant Jung Quey	122
Motion in Arrest of Judgment of Defendant Li Cheung	123
Motion in Arrest of Judgment of Defendant Mon Hing	124
Motion in Arrest of Judgment of Defendant Yt Yee	125
Order Allowing Writ of Error and Appeal, and to Operate as a Supersedeas	146
Order Extending Time to Docket Case.....	150
Order Fixing Bail of Defendants, etc.....	148
Order Overruling Demurrer	13
Order Overruling Motion for New Trial, etc..	126
Order Settling, etc., Bill of Exceptions.....	114
Petition for Writ of Error and Appeal.....	130
Pleas of Not Guilty.....	14
Praecipe for Transcript of Record.....	1
Receipt for Copy of Bill of Exceptions.....	114
Return to Writ of Error.....	155
Stipulation and Order Extending Time to Docket Case	151

	Index.	Page
TESTIMONY ON BEHALF OF PLAIN- TUFF:		
GENNER, HENRY.....		43
HARRISON, THOMAS R.....		68
Cross-examination.....		71
HEAD, JOSEPH.....		46
Cross-examination.....		50
Redirect Examination....		51
(Recalled in Rebuttal)..		87
JENNINGS, BERNICE E.....		30
Cross-examination.....		32
Redirect Examination....		32
KAY, JUNG.....		52
Cross-examination.....		54
KIRCHISEN, A. V.....		61
Cross-examination.....		63
MATTHAI, H.....		32
Cross-examination..		38
(Recalled in Rebuttal).....		88
POKORNEY, L. L.....		26
Cross-examination.....		29
Redirect Examination.....		30
SPRINGER, GEORGE J.....		42
STONE, J. T.....		43
Cross-examination..		44
TOLAND, JOHN (Recalled in Rebuttal..		89
WILLIAMS, GEORGE.....		44
Cross-examination.....		45
YEE, YT.....		54
Cross-examination.....		58

Index.	Page
TESTIMONY ON BEHALF OF DEFEND- ANTS:	
BELDEN, D. F.....	64
Cross-examination	64
BROWN, CHARLES W.....	65
Cross-examination	66
Redirect Examination	68
Recross-examination	68
CHEUNG, LI	83
Cross-examination	85
Redirect Examination	85
(Recalled)	89
CHUNG, WONG	86
Cross-examination	87
FAT, YICK	72
Cross-examination	73
FINN, JAMES W.....	81
GRAU, LOUIS HENRY.....	59
Cross-examination	60
HING, MON	77
Cross-examination	80
LANDERS, C. M.....	60
Verdict	116
Verdict—April 13, 1914.....	15
Verdict on First Count of Indictment.....	115
Verdict on Second Count of Indictment.....	115
Writ of Error.....	153

*United States of America, District Court of the
United States, Northern District of California.*

CLERK'S OFFICE—No. 5541.

UNITED STATES OF AMERICA,

vs.

JUNG QUEY et al.

Praeceptum [for Transcript of Record].

TO THE CLERK OF SAID COURT:

Sir: Please issue Indictment.

Demurrer of Jung Quey.

Demurrer of Li Chung and Yik Fat.

Demurrer of Mon Hing.

Mar. 9. Order overruling demurrers.

March 13. Plea of defendants.

April 13. Verdict, not guilty as to first count.

June 10. Impanelment of jury.

June 11. Minutes of trial.

June 12. Minutes of trial.

June 12. Verdicts.

June. 25. Motions in arrest of judgment, motion for
new trial, Order denying motions and sentence,
Judgment.

July 7. Petition for writ of error, Order writ of
error allowed, bail Jung Quey, fixed, assignment
of errors.

Bill of exceptions.

Cost bond on writ of error.

Citation on writ of error.

Writ of error.

J. C. CAMPBELL and
WM. HOFF COOK,
Attorney for Appellants.

[Endorsed]: Filed Sep. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [1*]

Indictment.

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

At a Stated Term of Said Court Begun and Holden
at the City and County of San Francisco, in the
State and Northern District of California, on
the First Monday of November, in the Year of
Our Lord One Thousand Nine Hundred and
Thirteen. The Grand Jurors of the United
States of America, Within and for the State and
District Aforesaid on Their Oaths Present:

THAT JUNG QUEY, alias SAM KEE, LI
CHEUNG, YIK FAT, MON HING, and JT YEE,
heretofore, to wit, on the twenty-ninth day of Janu-
ary in the year of our Lord, One Thousand Nine
Hundred and Fourteen, in the Northern District of
California, and within the jurisdiction of this honor-
able Court, did wilfully, knowingly, unlawfully,
wickedly, corruptly and feloniously conspire, com-
bine, confederate and agree together and with divers
other persons whose names are to the Grand Jurors
aforesaid, unknown, to commit certain offenses
against the United States, that is to say:

Violation
Sec. 37 C. C.
U. S. and Act
Feb. 9, 1909
as amended,
etc.

They, the said JUNG QUEY, alias SAM
KEE, LI CHEUNG, YIK FAT, MON
HING, and JT YEE did, at the time and
place aforesaid, knowingly, willfully, unlawfully,
wickedly, corruptly and feloniously conspire, com-

*Page-number appearing at foot of page of original certified Record.

bine, confederate and agree together and with said divers other persons whose names are, as aforesaid, to the Grand Jurors aforesaid unknown, to wilfully, unlawfully and knowingly import and bring into the United States, and assist in so doing, from some foreign port or place to the Grand Jurors aforesaid, unknown, seven skins or bladders containing fourteen pounds of opium [2] prepared for smoking purposes, contrary to law.

That said conspiracy, combination, confederation and agreement between the said JUNG QUEY, alias SAM KEE, LI CHEUNG, YIK FAT, MON HING, and JT YEE, and the said divers other persons whose names are, as aforesaid, to the Grand Jurors aforesaid, unknown, was continuously throughout all the time from and after the said twenty-ninth day of January in the year of our Lord One Thousand Nine Hundred and Fourteen, and at all of the times in this indictment mentioned, and referred to, and particularly at the time of the commission of each and all of the overt acts in this indictment hereinafter set forth, in existence and process of execution.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said LI CHEUNG and YIK FAT, on or about the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, brought into the port of San Francisco in the State and Northern District of California, from some foreign port or place to the Grand Jurors aforesaid, un-

known, seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, contrary to law.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said LI CHEUNG and YIK FAT, on the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, on the Steamship "China," then and there lying and being in the port of San Francisco in the State and Northern District of California, prepared seven skins or bladders containing [3] fourteen pounds of opium prepared for smoking purposes which said opium had theretofore been brought into the United States from some foreign port or place to the Grand Jurors aforesaid, unknown, contrary to law, for the purpose of causing the same to be delivered to the said JUNG QUEY, alias Sam Kee.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said LI CHEUNG and YIK FAT, on the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, on the steamship "China," then and there lying and being in the port of San Francisco in the State and Northern District of California, then and there delivered seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, to one H. Matthaei, a quartermaster on said steamship

“China,” for the purpose of having the said opium delivered to the said JUNG QUEY, alias Sam Kee.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said MON HING and JT YEE, on the thirty-first day of January in the year of our Lord one thousand nine hundred and fourteen, at the City and County of San Francisco in the State and Northern District of California, received seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, which said opium had theretofore been brought into the United States from some foreign port or place to the Grand Jurors aforesaid, unknown, contrary to law, by the said LI CHEUNG and YIK FAT. [4]

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United States of America in such case made and provided.

SECOND COUNT.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

THAT, JUNG QUEY, alias Sam Kee, LI CHEUNG, YIK FAT, MON HING, and JT YEE, heretofore, to wit, on the twenty-ninth day of January, in the year of our Lord one thousand nine hundred and fourteen in the Northern District of California, and within the jurisdiction of this honorable Court, did wilfully, knowingly, unlawfully, wickedly, corruptly and feloniously conspire, combine, confederate and agree together and with divers other per-

sons whose names are to the Grand Jurors aforesaid, unknown, to commit certain offenses against the United States, that is to say:

They, the said JUNG QUEY, alias Sam Kee, LI CHEUNG, YIK FAT, MON HING, and JT YEE did at the time and place aforesaid, knowingly, wilfully, unlawfully, wickedly, corruptly and feloniously conspire, combine, confederate and agree together and with said divers other persons whose names are, as aforesaid, to the Grand Jurors aforesaid, unknown, to wilfully, fraudulently and knowingly receive and conceal seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, which as they, the said JUNG QUEY alias Sam Kee, LI CHEUNG, YIK FAT, MON HING, and JT YEE then and there knew, had been imported into the United States contrary to law.

That said conspiracy, combination, confederation and [5] agreement between the said JUNG QUEY, alias Sam Kee, LI CHEUNG, YIK FAT, MON HING and JT YEE, and the said divers other persons whose names are, as aforesaid, to the Grand Jurors aforesaid, unknown, was continuously throughout all the time from and after the said twenty-ninth day of January in the year of our Lord one thousand nine hundred and fourteen, and at all of the times in this indictment mentioned, and referred to, and particularly at the time of the commission of each and all of the overt acts in this indictment hereinafter set forth, in existence and process of execution.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of

said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said LI CHEUNG and YIK FAT, on or about the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, brought into the port of San Francisco in the State and Northern District of California, from some foreign port or place to the Grand Jurors aforesaid unknown, seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, contrary to law.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said LI CHEUNG and YIK FAT, on the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, on the steamship "China," then and there lying and being in the port of San Francisco in the State and Northern District of California, prepared seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes which said opium had [6] theretofore been brought into the United States from some foreign port or place to the Grand Jurors aforesaid, unknown, contrary to law for the purpose of causing the same to be delivered to the said JUNG QUEY, alias Sam Kee.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object

thereof, the said LI CHEUNG and YIK FAT, on the thirtieth day of January, in the year of our Lord one thousand nine hundred and fourteen, on the steamship "China," then and there lying and being in the port of San Francisco, in the State and Northern District of California, then and there delivered seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, to one H. Matthaui, a quartermaster on said steamship "China," for the purpose of having the said opium delivered to the said JUNG QUEY, *alias* Sam Kee.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further state: That in furtherance of said conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said MON HING and JT YEE, on the thirty-first day of January, in the year of our Lord one thousand nine hundred and fourteen, at the City and County of San Francisco, in the State and Northern District of California, received seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, which said opium had theretofore been brought into the United States from some foreign port or place to the Grand Jurors aforesaid unknown, contrary to law, by the said LI CHEUNG and YIK FAT.

Against the peace and dignity of the United States of America, and contrary to the form of the statute of the said United [7] States of America in such case made and provided.

JNO. W. PRESTON,
United States Attorney.

Names of Witnesses Appearing Before the Grand Jury: J. A. Olivier, T. R. Harrison, H. Matthaei, A. V. Kircheisen.

[Endorsed]: A True Bill. J. G. Martin, Foreman Grand Jury. Presented in Open Court and Filed Feb. 6, 1914. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [8]

In the United States District Court, Northern District of California, First Division.

No. 5439.

THE UNITED STATES,

Plaintiff,

vs.

JUNG QUEY, *alias* Sam Kee et al.,

Defendants.

**Demurrer of Defendant Jung Quey, alias Sam Kee,
to Indictment.**

Now comes the defendant Jung Quey, *alias* Sam Kee and demurs to the indictment herein, and to each Count thereof, on the grounds:

1. That the first Count of said indictment does not state facts sufficient to constitute a public offense by defendant.

2. That said first Count of said indictment does not allege any overt act as done knowingly or fraudulently, nor does it allege any overt act which could be in furtherance of any conspiracy "to import opium."

3. That the second Count of said indictment does

not state facts sufficient to constitute a public offense by defendant.

4. That said Count of said indictment does not allege any overt act to have been done knowingly or fraudulently.

WHEREFORE defendant asks that this demurrer be sustained as to each Count, and the indictment dismissed.

WM. HOFF COOK,

Attorney for said Defendant.

Receipt of a copy of the within demurrer is hereby admitted this 17th day of February, 1914.

JNO. W. PRESTON,

United States Attorney.

[Endorsed]: Filed Feb. 17, 1914. W. B. Maling, Clerk. By Francis Krull, Deputy Clerk. [9]

In the United States District Court, Northern District of California, First Division.

No. 5439.

THE UNITED STATES,

Plaintiff,

vs.

JUNG QUEY, alias SAM KEE et al.,

Defendants.

Demurrer of Defendants Li Cheung and Yick Fat to Indictment.

Now come the defendants Li Cheung and Yick Fat and to demur to the indictment herein, and to each count thereof, on the grounds:

1. That the first count of said indictment does not state facts sufficient to constitute a public offense by defendant.

2. That said first count of said indictment does not allege any overt act as done knowingly or fraudulently, nor does it allege any overt act which could be in furtherance of any conspiracy "to import opium."

3. That the second count of said indictment does not state facts sufficient to constitute a public offense by defendants.

4. That said second count of said indictment does not allege any overt act to have been done knowingly or fraudulently.

WHEREFORE defendant asks that this demurrer be sustained as to each count, and the indictment dismissed.

WM. HOFF COOK,
Attorney for said Defendant.

Receipt of a copy of the within demurrer is hereby admitted this 17th day of February, 1914.

JNO. W. PRESTON,
United States Attorney.

[Endorsed]: Filed Feb. 17, 1914. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [10]

In the United States District Court, Northern District of California, First Division.

No. 5439.

THE UNITED STATES,

Plaintiff,

vs.

JUNG QUEY, alias Sam Kee et al.,

Defendants.

**Demurrer of Defendants Mon Hing and Yt Yee to
Indictment.**

Now come the defendants Mon Hing and Yt Yee and demur to the indictment herein, and to each count thereof, on the grounds:

1. That the first Count of said indictment does not state facts sufficient to constitute a public offense by defendants.

2. That said first Count of said indictment does not allege any overt act as done knowingly or fraudulently, nor does it allege any overt act which could be in furtherance of any conspiracy "to import opium."

3. That the second Count of said indictment does not state facts sufficient to constitute a public offense by defendants.

4. That said second Count of said indictment does not allege any overt act to have been done knowingly or fraudulently.

WHEREFORE defendant asks that this demurrer be sustained as to each Count, and the indictment dismissed.

WM. HOFF COOK,
Attorney for said Defendant.

Receipt of a copy of the within demurrer is hereby admitted this 17th day of February, 1914.

JNO. W. PRESTON,
United States Attorney.

[Endorsed]: Filed Feb. 17, 1914. W. B. Maling,
Clerk. By Francis Krull, Deputy Clerk. [11]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Monday, the 9th day of March, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

#5441.

U. S.

vs.

JUNG QUEY et al.,

Order Overruling Demurrer.

The demurrer to the indictment herein having been heretofore submitted to the Court for decision, now after due consideration had, by the Court ordered that said demurrer be, and the same is hereby overruled. [12]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Friday the 13th day of March, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

#5441.

U. S.

vs.

JUNG QUEY *alias*, etc., LI CHEUNG, YIT FAT,
MON HUNG and JT YEE.

Pleas of Not Guilty.

Each of the defendants herein being present with his counsel, W. H. Cook, Esqr., each of said defendants then and there pleaded not guilty, and by the Court ordered that said pleas be, and the same are hereby entered. Further ordered that the trial of this case be set for April 10, 1914. [13]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

No. 5441.

THE UNITED STATES OF AMERICA,

vs.

JUNG QUEY et al.

Verdict—April 13, 1914.

We, the Jury, find JUNG QUEY, LI CHEUNG, YIT FAT, MON HING and JT YEE, the defendants at the bar, NOT GUILTY on first Count.

W. S. HANHIDGE,

Foreman.

[Endorsed]: Filed April 13th, 1914, at 9 o'clock and 45 minutes P. M. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [14]

[Minutes of Trial—June 10, 1914.]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Wednesday, the 10th day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 5441.

UNITED STATES OF AMERICA

vs.

JUNG QUEY, LI CHEUNG, MON HING, and
JT YEE.

Impanelment of Jury, etc.

This case this day came on regularly for trial, upon being called both parties answered ready for trial. The defendants Jung Quey, Li Cheung and Mon Hing were present in open court with their attorney, Wm.

Hoff Cook, Esq. The absence of defendant Jt Yee was allowed by the Court, over the objection of the United States Attorney, upon the statement of Mr. Cook. John W. Preston, Esq., was present on behalf of the United States. Mr. Cook then moved the Court to excuse all jurors called or impaneled in the former trial of these defendants on April 10th, 1914, which said motion the Court ordered denied, but ordered that the following named persons, S. H. Lohsen, Thos. J. Welsh, H. E. Sanderson, James H. Brady, Geo. M. Rolph, Irving H. Khan, Chas. J. Bandmann, F. T. Bowers, Wm. S. Hanbridge, Joseph H. Handlon, Dixwell Hewitt, Leo Pockwitz, who were the jurors impaneled in the former trial of this case be, and they are hereby, excused from attendance upon the Court until June 15th, 1914, at 10 o'clock A. M. Mr. Cook then interposed "Pleas of Former Acquittals" as to each defendant. The Court then ordered that the jury box be filled from the regular Panel of Trial Jurors, as it now remains. Thereupon the following named persons were duly called, sworn and examined, viz.: William J. Dutton, D. R. Mc Niel, Wm. N. McCarthy, P. A. Dinsmore, George L. Center, Thomas Dillon, K. H. Plate, Leroy W. Jackson, C. R. Johnson, J. G. Barker, Peter A. Smith, D. C. Dorsey. D. R. Mc Niel was excused by the Court at the request of the defendants. Angelo J. Rossi was then called, sworn and examined. William J. Dutton was, at the request of the defendants, excused by the Court until June 18th, 1914, at 10 o'clock A. M. J. H. Taylor, was then duly called, sworn and examined. Peter A. Smith was excused

by the Court, at the request of the defendants. [15] Alfred P. Hampton was then called, sworn and examined. Wm. N. McCarthy was excused by the Court at the request of the defendants. J. T. Drennan was then called, sworn and examined. K. H. Plate was excused by the Court, at the request of the defendants. C. M. Volkman was then called, sworn and examined. George L. Center was excused by the Court, at the request of the defendants. The regular Panel of Trial Jurors having been thus exhausted, the Court ordered that a Special Venire issue herein for the appearance of ten persons to serve as trial jurors and that the United States Marshal go into the streets and highways and summon ten such persons to act accordingly. Subsequently, the said United States Marshal returned into court and made return that he had summoned the following named persons to appear as heretofore ordered, viz.: Michael Mulloy, Thomas Morton, R. E. Shaw, Fred A. Deremer, Percy F. Morris, E. F. Bayles, H. K. Burgess, Sam Heyman, W. R. Bacon and J. A. Bried, and upon being called in open court, each of said persons answered present with the exception of Michael Mulloy, who had been previously excused by the Court for cause. Thereupon, the Court ordered that the further impanelment of a jury in this case do proceed. W. R. Bacon was then called, sworn and examined. C. R. Johnson was excused by the Court at the request of the defendant. H. K. Burgess was then called, sworn and examined and excused by the Court for cause. Percy F. Morris was then called, sworn and examined. W. R. Bacon was excused by the Court

at the request of the defendants. J. A. Bried was then called, sworn and examined. C. M. Volkman was excused by the Court at the request of the defendants. Sam Heyman was then called, sworn and examined. J. H. Taylor was excused by the Court at the request of the defendants. Fred A. Deremer was then called, sworn and examined. Thereupon, the Jury being complete and composed of the following named persons they were accordingly duly sworn to try the issues joined in this case, viz.: P. A. Dinsmore, Thomas Dillon, Leroy W. Jackson, J. G. Barker, D. C. Dorsey, Angelo J. Rossi, Alfred P. Hampton, J. T. Drennan, Percy F. Morris, J. A. Bried, Sam Heyman and Fred A. Deremer. Mr. Preston stated the case to the Court and jury. Mr. Cook then introduced in evidence the Indictment and Verdicts of the previous trial. Mr. Preston then called L. L. Pokorney, Bernice E. Jennings and H. Matthaei, who were each duly sworn and examined, and introduced in evidence a certain card which was filed and marked United States Exhibit No. 1 for identification. Thereupon, the hour of adjournment having arrived the Court ordered that the further hearing of this case be, and the same is hereby, continued until June 11th, 1914, at 10 o'clock A. M.

[16]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Thursday the 11th day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 5441.

UNITED STATES OF AMERICA

vs.

JUNG QUEY et al.

[Minutes of Trial—June 11, 1914.]

The trial of this case was this day resumed. All of the defendants were present, as well as the attorneys for the respective parties and jury complete. H. Matthaei resumed the stand on behalf of the United States and was further examined. Mr. Preston then called George J. Springer, Henry Gemmer, J. T. Stone, Joseph Head, George Williams and Young Kay, who were each duly sworn and examined, and introduced in evidence exhibits which were filed and marked as follows: United States Exhibit 2 (for identification), 3, 4, 5 (for identification), 6 (for identification), 7, 8, and 9. Mr. Cook then called defendant Jt Yee, L. H. Grau, and C. M. Landers, who were each duly sworn and examined on behalf of defendants. Mr. Preston then called A. V. Kircheisen, who was duly sworn and examined on behalf of the United

States. Thereupon, the hour of adjournment having arrived, the Court ordered that the further hearing of this case be, and the same is hereby continued until June 12th, 1914, at 10 o'clock A. M. [17]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Friday the 12th day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 5441.

UNITED STATES OF AMERICA

vs.

JUNG QUEY et al.

[Minutes of Trial—June 12, 1914.]

Defendants Jung Quey, Li Cheung and Mon Hing were present, the absence of Jt Yee having been heretofore allowed by the Court. The attorneys for respective parties were present and the jury complete. Mr. Cook called D. F. Belden who was duly sworn and examined. Mr. Preston then called Charles W. Brown and Thomas R. Harrison, who were each duly sworn and examined on behalf of the United States. Thereupon Mr. Preston rested the case for the United States. Mr. Cook called Mon Hing (defendant) and James W. Finn, who were each duly sworn and examined on behalf of defend-

ants. D. D. Jones was duly affirmed as Chinese Interpreter herein, and thereupon Mr. Cook called defendants Yik Fat, Li Cheung and Wong Chung, who were each duly sworn and examined, *thru* interpreter, on behalf of defendants, and thereupon Mr. Cook rested their defense. Mr. Preston called in rebuttal Joseph Head, H. Matthaei, Li Cheung and John Toland, who were each examined accordingly. The case was then argued by Mr. Preston and Mr. Cook and submitted. The Court then charged the jury and instructed [18] them to return a verdict for each of the defendants upon their plea of former acquittal for the charge on the first count of the Indictment and also return a verdict for each of the defendants upon his plea of former acquittal of conspiracy with Yik Fat herein. The jury thereupon at 5 o'clock and 40 minutes P. M. retired to deliberate upon their verdict and subsequently returned into court at 6 o'clock and 30 minutes P. M., and asked that a certain portion of the testimony of defendant Jt Yee be read to them which request was by the Court granted and again they retired at 6 o'clock and 40 minutes P. M. and after due deliberation had thereupon returned into court at 6 o'clock and 55 minutes P. M. and upon being called all jurors answered to their names and were found to be present and upon being asked by the Court if they had agreed upon a verdict answered in the affirmative and presented three written verdicts which the Court ordered filed and recorded, which said verdicts were in the words following:

"We, the Jury, find Jung Quey, Li Cheung, Mon Hing and Jt Yee, the defendants, at bar, Guilty on the Second Count of the Indictment herein. John G. Barker, Foreman."

"We, the Jury, find for the defendants at the bar upon their pleas of former acquittal of the offenses charged in the First Count of the Indictment. John G. Barker, Foreman."

"We, the Jury, find for each of the defendants at the bar upon his pleas of former acquittal of conspiracy with Yok Fat alone.

"JOHN G. BARKER,
Foreman."

At the request of Mr. Cook the Court ordered that defendants Jung Quey, Li Cheung, Mon Hing and Jt Yee be allowed to go on the bonds heretofore given in this case, and that they be and appear in court on June 19th, 1914, at 2 o'clock P. M. for judgment.
[19]

The Court further ordered that the jurors in this case now serving on the regular panel of this court be, and they are hereby excused from further attendance upon the Court until June 15th, 1914, and that the four special talesmen who served herein be, and they are hereby, excused from further attendance upon the Court. The Court further ordered that the United States Marshal for this District pay the persons hereinafter named, who were summoned on the Special Venire herein, the sums set opposite their respective names, being the amounts due them for their appearance and services as trial jurors in this case, and that the clerk of this Court issue certificates

accordingly, to wit: Percy F. Morris, J. A. Bried, Sam Heyman and Fred A. Deremer, the sum of \$9.00 each. Michael Mulloy, Thomas Morton, R. E. Shaw, E. F. Bayley, H. K. Burgess and W. R. Bacon, the sum of \$3.00 each. [20]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY, *alias* Sam Kee, LI CHEUNG, MON
HING and YT YEE,

Defendants,

**Bill of Exceptions of Proceedings had Upon the Trial
of the Cause.**

Be it remembered that this cause came on for a second trial upon June 10th, 1914, and John W. Preston, Esq., United States Attorney for the Northern District of California, appeared and represented the plaintiff, and Wm. Hoff Cook, Esq., appeared and represented the defendants.

It then and there duly appeared to the Court that the defendants had been previously placed upon their trial upon the indictment in this cause, and that upon such trial the jury had found all of the defendants "not guilty" upon the first count of said indictment, and found the defendant, Yick Fat, "not guilty" upon the second count of said indictment, and the

jury upon said trial were unable to agree upon a verdict as to the defendants Jung Quey, *alias* Sam Kee, Li Cheung, Yt Yee and Mon Hing, upon the second count of said indictment. And that upon the impanelment of the jury upon said first trial of said cause that four talesmen were challenged by defendants by peremptory challenges, and that the names of said four talesmen were challenged by defendants by peremptory challenges, and that the names of said four talesmen so peremptorily challenged were in the jury-box and likely to be [21] called as prospective jurors upon the second trial of said cause.

That under the aforesaid circumstances and conditions the attorney for the defendants, prior to the clerk drawing any names from the jury-box for the second trial of said cause, requested the Court to order the clerk to withdraw from said box the names of said four talesmen so peremptorily challenged upon the first trial of said cause. Said request was made upon the grounds that necessarily the defendants would be obliged to again peremptorily challenge said four talesmen if called to qualify as jurors upon said second trial, with the result that the defendants would in reality, under the existing conditions, be only allowed six free peremptory challenges, instead of ten free peremptory challenges as allowed by law. Such request on behalf of defendants was by the Court denied, to which ruling defendants duly excepted.

Thereupon an impanelment of the jury was commenced, and said four names of said talesmen so peremptorily challenged were again called among the

first twelve talesmen drawn from the box for examination as to qualifications to serve as jurors upon said second trial. That defendants were obliged to and did again exercise peremptory challenges as to three of said talesmen so peremptorily challenged as aforesaid upon said first trial, and the fourth of said talesmen was sworn and impaneled as a juror upon said second trial; and before the jury was impaneled and completed, and before said fourth talesman was sworn and impaneled, the ten peremptory challenges allowed to defendant by law had not all been exercised, the defendants had exercised the ten peremptory challenges allowed by law. [22]

That after said jury had been impaneled said United States Attorney, on behalf of the plaintiff, made his opening statement to the jury.

That upon the conclusion of said opening statement the following proceedings were had:

Mr. COOK.—At this time and on behalf of the defendants I desire to introduce in evidence the indictment in this case, together with the verdict of acquittal of the first count of this indictment, and of the acquittal of the defendant Yick Fat on the second count of the indictment, and the disagreement of the jury upon the second count as to all of the defendants.

Mr. PRESTON.—That is part of your defense.

Mr. COOK.—I am asking that it be considered not in evidence. I desire the testimony as to any acts or statements of Yick Fat as binding these parties as having been an acquittal of these parties of any conspiracy; that is, the acquittal of Yick Fat as being an acquittal of these defendants of any conspiracy as

alleged in the indictment with the man acquitted. In other words, the acquittal was an acquittal of these defendants in connection with Yick.

That thereupon said record so offered on behalf of defendants was by the Court admitted in evidence.

Thereupon the following proceedings were had:

[Testimony of L. L. Pokorney, for Plaintiff.]

L. L. POKORNEY was called and sworn as a witness on behalf of the plaintiff, and testified as follows:

That he is a photographer and has been living at Portland, Oregon, since March 27th, and that he was employed as a photographer at the Bushnell Studio at 1142 Market Street in San Francisco prior to that time.

Q. "Do you remember on or about the 3d day of February [23] 1914, of having in this building made the photographs of any Chinese?"

Mr. COOK.—Objected to as incompetent, irrelevant and immaterial. The Court. The objection is overruled. Mr. Cook.—Exception."

"A. I remember taking pictures; I do not remember just the day, but I remember taking some pictures. Mr. Preston.—Q. Was it about that time? A. Yes, sir. Q. I will ask you whether or not you recognize any of the Chinese in the room whose photographs you made at the time? Mr. Cook.—The same objection. The Court overruled. Mr. Cook.—Exception. A. I remember the tall fellow there in the center of the three. Mr. Preston. (Addressing the defendant.) Stand up. Q. Is that the one? A. Yes, sir. Q. I will ask you whether or not there was any other

(Testimony of L. L. Pokorney.)

Chinaman you photographed at the same time? A. There was a short fellow, much shorter than he is whose picture was taken at the same time his was.

Q. Do you remember at whose request you made these photographs? Mr. Cook. --Objected to as incompetent, irrelevant and immaterial. The Court. Over-

ruled. Mr. Cook. --Exceptions. A. We used to get the calls from the Marshal's office who requested the studio to send a man up here with the camera to take these pictures; I do not know who it was that called up. Mr. Preston. Q. Do you remember whether or

not Mr. Cook was then present? A. I do not remember. Q. Do you remember whether or not you collected any money? A. Yes, sir; I collected \$4.00.

Q. Do you remember from whom you collected it? Mr. Cook. The same objection, that it is incompetent, irrelevant and immaterial; these photographs were taken at the request of the Marshal and the matter of who paid for them is entirely immaterial. Mr.

Preston. I want to show it was during the conspiracy. Mr. Cook. --It was after it ended. Mr. Preston.

It is not. Mr. Cook. --It is when the men were before the commissioner. Mr. Preston. --This was during the continuance of [24] the conspiracy.

The Court. --I thought this conspiracy was in January. Mr. Preston. It began in January and continued all the time mentioned in the indictment. The

conspiracy was still in operation. The Court. What is the time set in the indictment? January, 1914, as I understand the indictment; it was during all the times mentioned in the indictment. Mr. Cook. --This was

(Testimony of L. L. Pokorney.)

on the arrest of the men before the Commissioner. They were charged with a subsequent offense. The Grand Jury never indicted them; they took the photographs at that time as they always do; the Marshal sent for the photographer. They always take the pictures of Chinese defendants and not of the other defendants. The Court. There is no way of fixing a definite time. The Government is not bound to give its proof of the specific day. Mr. Preston. There was no preliminary hearing on this charge at all. Mr. Cook. There is no overt act alleged after the 31st day of January. Mr. Preston. That is true. The question is whether or not we are shut out subsequent to January 31st. The Court. I do not know what the nature of your offer is. Mr. Preston. We are trying to show that this other defendant, Sam Kee, paid for these photographs. Mr. Cook. I object to the statement. Mr. Preston. That is the time while the conspiracy was in full operation; nobody under arrest at all on that charge except these two. I would like to offer the receipt. It is a matter for the Court to consider, and let the witness be excused. Mr. Cook. Objected to as incompetent, irrelevant and immaterial. The only allegation in the indictment of overt acts taken place are on the 31st of January of this year. The United States Attorney alleged and stated to the jury the only three overt acts he relied upon. Mr. Preston. Because they are not overt acts does not make any difference. The Court. They [25] are offered to show that one of these defendants came to the rescue of the others by the payment of money.

(Testimony of L. L. Pokorney.)

Mr. Preston. Yes, another transaction not connected with this. The Court. The objection is sustained. Mr. Preston. We want to show that Mr. Cook here paid for the photographs at that time and when Mr. Sam Kee was arrested the receipt was in Sam Kee's pocket. The court. That is a round-about way. Mr. Preston. To show when Sam Kee takes the stand and says he did not know these men he did know them. The Court. That might suffice for rebuttal. Mr. Preston. I would like to identify this receipt. Mr. Cook. No objection identifying this other paper. Mr. Preston. I wish to show the piece of paper he gave Mr. Cook at the time. The Court. If it is only for the purpose of offering this in rebuttal. Mr. Preston. Simply to identify it now for the purpose of hereafter using it if we can. Q. I show you here a paper, in whose writing is that? A. That is my writing. Q. To whom did you give that paper? A. It says W. H. Cook, but I could not identify the gentleman. Mr. Cook. It was Mr. Waldstein, the gentleman over there, who is connected with my office? A. I don't know. Mr. Preston. Q. Was that \$4.00 for the picture of this Chinaman and the other one? A. Yes, sir. It is quite unusual that a receipt is given as he paid me the money at the time. I recall he insisted on a receipt for it. Mr. Preston. We ask that it be marked as Exhibit 1 for identification. (The paper is marked "United States Exhibit 1 for identification.")

Cross-examination.

Mr. COOK.—Q. You don't know at all, do you, Mr.

(Testimony of L. L. Pokorney.)

Pokorney, what these photographs were for? A.

No, sir; I never knew what those pictures were for.

Q. You simply knew you took two photographs and you came at the request of the Marshal to take them?

A. Yes, [26] sir. Q. And some gentleman re-

quested a receipt for the \$4.00 from you in my name for the taking of these photographs? A. I do not

know who it was; it was in that name.

Redirect Examination.

Mr. PRESTON.—Q. The Marshal did not pay you the money? A. No, sir, it was a total outsider that seemed to handle the case. He spoke to the men.

Q. You are not sure that Marshal ordered you over are you? A. No, sir."

[Testimony of Bernice E. Jennings, for Plaintiff.]

BERNICE E. JENNINGS, was called as a witness on behalf of the plaintiff, and sworn and testified as follows:

My name is Bernice; My Chinese name is Chang. My given name is besides Chang is Jennings.

Q. You go by the name of Bernice Jennings? A. Yes, sir.

Mr. COOK.—At this time I desire to object to any evidence in this case under the indictment on the part of the prosecution on the ground that the offense as charged of the conspiracy to conceal opium after importation is an unconstitutional act and not an offense within the Federal jurisdiction. The Court. Overruled. Mr. Cook. Exception.

Mr. PRESTON.—Q. Do you know this man here, Sam Kee or Jung Quey. A. Yes, sir.

(Testimony of Bernice E. Jennings.)

He is my father; I live at 742½ Washington Street in an apartment house and I lived in the same place in January and February of this year. Four rooms in that house are occupied by my father and his family; The numbers of those rooms are 15 and 19: Four rooms with two numbers only. There was a telephone number in room 17 in my name: There has always been a number on that room.

Q. What is the number of the telephone that is in room 17? Mr. Cook. Objected to as incompetent, irrelevant and immaterial. [27]

The COURT.—Overruled. Mr. Cook. Exception. A. Kearney 5484.

There are two rooms that have the same number 17; and two rooms had one number 15; and two rooms had one number 19.

A bunch of girls live there in No. 17. My father had another telephone numbered China 1217. All the girls have that room like a club, and there are Chinese and live in town, but they have American names like Margaret, Irene and Sue.

The purpose of having this telephone was that we had some friends from the country who live out of town; we did not want to bother my father's telephone so all of us girls put it in. The suite of rooms numbered 17 are fitted up so that one is a parlor and the other a bedroom. We girls pay the rent, which is \$3.00 a month; and we pay for the telephone: The room is \$11.50 and the telephone \$2.50 and we rent a piano at \$3.00, making \$17.00 a month in all; and six of us pay this amount, and we each pay \$3.00 a

(Testimony of Bernice E. Jennings.)

month. The landlord is a Chinaman named Wong Fook; and my father has nothing to do with it. I have earnings of my own. I adopted an American name just because I wanted to: Other girls do the same; one of the girls is called Miss Hall. We do not use a Chinese numbered telephone because we have all American friends out of town and we wanted to telephone we always had to use the Chinese telephone, so we got a new telephone. We did not want to bother other people every time we wanted to telephone. I speak Chinese, but talk mostly English to my friends.

Cross-examination.

There is no other room there No. 17. There is another room 16. The telephone is a nickle in the slot telephone. We have a piano and the members of the club play the piano and have music, and we have the rooms as social rooms, and place of meeting.
[28]

Redirect Examination.

Are club rooms are between the rooms of my father and mother. Some man has room 16, I don't know him.

[Testimony of H. Matthai, for Plaintiff.]

H. MATTHAI, called as a witness on behalf of the people, and sworn, and testified as follows:

Twenty-four years old and a quartermaster and have been going to sea for ten years. In January and February, 1914, I was quartermaster on the Steamer "China," and have been for a little over a year. That steamer goes between San Francisco and

(Testimony of H. Matthai.)

Honolulu, the Orient, Japan and China. She returned to San Francisco on January 26th, 1914. There were four quartermasters, and one of them named Kirchisen roomed with me. I know the defendants. Defendants Li Cheung was storekeeper's boy on the steamer. The storekeeper's room is aft; my room is forward under the forecastle, and the storekeeper's is below deck. I had a conversation with Li Cheung in regard to opium about January 28th when the "China" was at pier 42 at 3rd and Townsend Street in San Francisco. The conversation was in the storekeeper's room: We were alone at the time. He said he wanted to take some opium ashore the next day. I said "I don't know," and he gave me a letter the same evening. He wrote the letter in the storekeeper's room. He gave me the letter between 8 and 9 o'clock in the evening. I took the letter to 749 Clay Street. He told me to take it there. There was a name in English written on there, Wing Hing Lung Company. Before I did anything with the letter I showed it to the chief officer of the vessel, named Maloney. I also showed it to Captain Head of the custom house. I gave it to him Friday morning, and got it back Friday afternoon. He kept it three or four hours. After I got it back I took it to 749 Clay Street, and showed it to Sam Kee one [29] of the defendants. He was not there when I got in. There was a young fellow in the store, and I showed it to him. There was a name written in Chinene. I said I wanted to see that man. He told me to sit down and wait awhile, and Sam Kee came

(Testimony of H. Matthai.)

in, when I gave him the letter. He told me before he read it to sit in the back so people could not see me from the street. He said, "sit further back in the chair." I sat down where he told me in the store not so close to the door. He read the letter, and he told me to come with him and took me in the back room on the same floor. It was a dark room and I could not see very much, I sat down on what looked like an old bed. He said did I have the stuff? I said, "I have not got it but I can get it." He said "Where are you going to take it?" I says, "I don't know, anywhere you want me to." I don't exactly remember any more that was said. He went out then and told me to wait awhile, and I waited in this dark room. Before he went away he gave me a little piece of paper and wrote something in Chinese on it. He was gone about half an hour. He did not come back himself.

Q. What kind of message did you receive?

A. The telephone rang, and this fellow who was in the store, he came to the back room and told me to go to Grant Avenue and Clay Streets. Mr. Cook. I object to that, what this man said, and anything he said or done outside of the presence of the defendant, and ask the answer be stricken out. The Court. Objection overruled and motion denied. Mr. Cook. Exception.

I could not hear what was said over the telephone the man was talking in Chinese. I left and went to Grant Avenue and Clay Street and saw Sam Kee, and he showed me the defendant Mon Hing and said that

(Testimony of H. Matthai.)

was the man who was going to get the stuff and he said "go and talk with him." At that time Mon Hing was at Grant [30] Avenue and Clay Street. He was not with Sam Kee. He was diagonally across the street from where were. I went toward him and he left me. Sam Kee did not go with me but walked along Grant Avenue. There was nothing said between Sam Kee and myself about the price. He asked me how much I had and I said, "I have not got anything but I think I can get 28 cans. Mon Hing asked me where he could come and get the stuff, and I told him that I didn't know, and he says "go and get the stuff first, and then ring up on the telephone where we are going to meet." He told me to ring up Kearney 5484. That is Sam Kee told me that before I left the store and he gave me a piece of paper with the telephone number on, but I don't know what has become of it. It was like the one just shown to me. After Mon Hing left I took the letter to the Custom House and gave it to Captain Head, and about half an hour later he gave it back to me. I gave the letter to my mess-boy and told him to give it to Li Cheung. He gave it to the Doctor's boy Yick Fat. That was on Friday. Between two and three o'clock that afternoon Kirchisen was in my room and Li Cheung brought in a bag that looked like a potato bag; I do not know whether anyone else was outside the door at that time. The bag had opium in it; that is there were seven bladders in it. (Here the witness is shown a grip or suitcase.) I have seen that grip before; it belongs to my partner Kirchisen.

(Testimony of H. Matthai.)

(Here witness was shown some bladders taken by the U. S. Attorney from the the aforesaid grip.) Those resemble the bladders which Li Cheung brought into my room. They were supposed to contain 28 cans of opium. He said it was 21, and I said "It could not be," and we finally agreed that there were 28 and he said he was going to give me \$7.50 a can to take it ashore. He agreed to give me \$196.00. (Here the witness was shown some rags which the U. S. Attorney took from the same grip.) I recognize [31] those two rags as being the rags that covered the bladders when they were brought to my room. There was a letter written in connection with the matter by Li Cheung which I gave to Captain Head. After I received this letter which Li Cheung wrote in my room I took the suitcase and contents ashore, and showed it to the customs officer at the gangplank first. His name was Williams. Then I took it while Mr. Harrison, a customs inspector, accompanied me over to the Southern Pacific Depot at 3d & Townsend Streets. I telephoned to Kearney 5484, and a girl answered the phone and I asked when they were coming up to get it. I said I could not come to Chinatown, and they agreed finally to come out where I lived at 20th & Illinois Street. That night I called up the same number again about 7:30 from the Olympia Hotel. I called up twice from 3d & Townsend Streets. The second time about an hour after the first time. I then asked when they were coming to get it. The first time they did not tell me a word about it; they told me to call up again in about an hour. The agreement was to come out to where I

(Testimony of H. Matthai.)

lived between 7 and 8 o'clock, at the Olympia Hotel. The same voice answered the telephone in the evening; they said they could not come, their house was watched. I did not make any arrangement for future delivery that night. The next morning or afternoon I called up for the fourth time from Pier 42, where the boat was docked. A girl answered the phone. I made the same arrangement as before to come out between 7 and 8 that Saturday night. The suitcase and contents were again placed by Mr. Harrison in my room in the Olympia Hotel that evening. That night I met Mon Hing and Yt Yee outside the Olympia Hotel door on the street. I shook hands with them, and asked them if they would come in and have a drink, and they did. Then I took them up to my room. When I got in my room I took the suitcase from under my bed and opened it up for Mon Hing. He said he could not take it then, [32] I should take it outside. I asked whether he had any money, and he said, "Yes." I did not deliver it to him in the room and did not have any understanding as to where I was to deliver it to him. I took it out on the street, and walked up 20th Street to Kentucky Street, and at that corner I saw Mon Hing and Yt Yee. They were on the opposite side of the street. Near the Southern Pacific viaduct on Kentucky Street I delivered the grip to Yt Yee, and Mon Hing paid me \$196.00, while Yt Yee walked away with the grip. I did not see them any more after that, and that ended the transaction. I divided the \$196.00 with Kirchisen, each taking half. Later I gave \$70.00 of mine to Captain Stone of the Customs Ser-

(Testimony of H. Matthai.)

vice. I gave the identical gold to Captain Stone that I received from the Chinaman. When I was talking to Sam Kee he told me that when the man came if he didn't have all the money to come down to my store and get the rest. Q. Had there been any talk between you and this defendant Li Cheung, or between Li Cheung and any other person in your presence before the steamer "China" reached San Francisco?

Mr. COOK.—Objected to on the ground that it is incompetent irrelevant and immaterial. The Court. Objection overruled. Mr. Cook. Exception. A. Yes, sir. Q. Where was it, and how many days out? A. I think it was between Yokohama and Honolulu. Q. What was the nature of the conversation. (Defendant made the same objection; it was by the Court overruled, and defendant excepted.) A. He asked me if I would be able to take something ashore for him in San Francisco. He did not say whether he had anything, but whether I could take it ashore or not. When those two defendants came into my room Inspector Harrison was concealed in the closet in my room. At the time they were in my room I counted the skins in the suitcase, and there were seven skins in it, and they were in it when I gave the [33] suitcase to Yt Yee, and *there* are and were similar to the skins and bladders which were shown to me here in the courtroom.

Cross-examination.

Mr. COOK.—At this time, I move to strike out, if the Court please, the testimony of this witness with

(Testimony of H. Matthai.)

relation to any of the overt acts, in relation to the first and second overt act alleged in the indictment, on the ground that it is incompetent, irrelevant and immaterial, and on the ground it appears affirmatively in evidence in this case that Yick Fat was acquitted by a jury in this cause of any conspiracy, combination, consideration or agreement as alleged in the second part of the indictment; that all of these defendants were acquitted of the offense charged in the first count of the indictment of conspiracy to import any of this opium into the United States, and that the second count of the indictment as to the overt act of the testimony of this witness in support thereof for the purpose it was offered by the United States Attorney is in support of the allegation of the overt act in furtherance of the further conspiracy, combination, confederation and agreement, and to effect and accomplish the object thereof, the said Li Cheung and Yick Fat, on the thirtieth day of January in the year of our Lord one thousand nine hundred and fourteen, on the steamship "China," then and there lying and being in the port of San Francisco in the State and Northern District of California, prepared seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes which said opium had theretofore been brought into the United States from some foreign port or place to the Grand Jurors aforesaid, unknown, contrary to law, for the purpose of causing the same to be delivered to the said Jung Quey, alias Sam Kee; and the second act alleged in pursuance of that conspiracy, that [34] Li Cheung and Yik Fat on the same day, at the same

(Testimony of H. Matthai.)

time and place, delivered seven skins or bladders containing fourteen pounds of opium to one H. Matthai, a quartermaster on the steamer "China." I submit under the evidence here there is no conspiracy whatever proved between anyone else than Yik Fat; no conspiracy proven between Sam Kee or Mon Hing at the time that any one of these acts testified to by this witness was concerned, nor as to any fact alleged as to these overt acts. That whatever was done there, was done, if it was done at all, was done in pursuance of a conspiracy solely between Yik Fat and Li Cheung, and the jury have found that no such conspiracy existed by reason of acquitting Yik Fat of conspiracy.

The motion was by the Court denied, and defendants duly excepted.

(Witness continuing on cross-examination.) I joined the "China" as quartermaster about January 9th, 1913, and at that time Kirchisen was a quartermaster on her. I knew him in the old country. It was he who suggested that I get the job of quartermaster on the Pacific Mail Company's steamers. I have been ashore at Honolulu on trips. Was very well acquainted with Kirchisen. Q. Why did you divide the money with Kirchisen? A. Because he knew that the trip before Li Cheung asked him whether he could take opium ashore for him. Q. Kirchisen was not in this. You were doing this with the Government; why should you be dividing money? A. He asked me at sea, "If you take it ashore, or I take it ashore, we will divide the money." I had never seen opium done up in skins or bladders before.

(Testimony of H. Matthai.)

I never saw Jung Quey till I went to the store on Clay Street, and never saw Mon Hing till I saw him at the corner of Clay and Dupont Streets. The name of my boy on the steamer was Ah Fat. The doctor's boy was Yick Fat. I had heard about my boy Ah Fat having been arrested for taking opium ashore; it was common knowledge [35] on the steamer. Any opium I took ashore from the "China" on January 29th or 30th, 1914, was taken ashore with the permission of the Custom authorities, and under promises from the Customs authorities that I would not get in trouble. I never met defendant Yt Yee till I met him near the Olympia Hotel that night. As a compensation for what I was going to do in the matter I was going to keep half of the money and Kirchisen was to get half, but there was no such understanding with the customs authorities before. They took some of the money from us afterwards as they said they wanted to use it as evidence. Getting this money was the incentive for doing what I did, and we were helping the Customs authorities. Kirchisen was not in my room when Li Cheung came in but he came in afterwards. Kirchisen was in and out of the room, and I don't remember whether the stuff was in the room when he first came in. I am sure there were seven bladders in the suitcase when I showed it to Mon Hing in my room. I had my quartermaster's uniform on the night I met Mon Hing and Yt Yee on 20th street. I did not expect to meet two Chinamen there, and did not ask why there were two. I did not have any talk with Yt Yee. The two Chinese left my room before I did that night. I closed the door after

(Testimony of H. Matthai.)

they went out, and then I took the suitcase and contents and went out. I did not see anything of Inspector Olivier when I went out. The two Chinese were on the opposite side of the street and opposite the Police Station at the corner of 20th and Kentucky Streets. I went from 20th Street to 18th Street and then two blocks down to Mariposa Street on Kentucky Street to the end of the viaduct where I gave the suitcase which has been shown me here. Li Cheung did not mention the name of Mon Hing or Jung Quey at any time.

Mr. COOK.—Do you remember the day the “China” was going to sail you [36] were subpoenaed by the Marshal to appear before the United States Commissioner as a witness upon the preliminary examination of these matters? A. I was subpoenaed by the Marshal about twenty minutes before the ship left. Q. Were you not standing on the deck near the gangplank and at about that time and was not Ah Fat who was your boy, and also called Chuck Fat, and Yick Fat near you, and did you not turn to Chuck Fat and say, “When you get to China you leave the ship and do not come back as there is too much trouble over the stuff and keep still”? A. No, sir, I never did.

[Testimony of George J. Springer, for Plaintiff.]

GEORGE J. SPRINGER was called and sworn on behalf of the plaintiff, and testified as follows:

I am employee of the Pacific States Telephone and Telegraph Company, and manager thereof. I have been at 742½ Washington Street and saw the telephone with the Number Kearney 5484 in room No. 17.

[Testimony of Henry Genner, for Plaintiff.]

HENRY GENNER was called as a witness on behalf of plaintiff, and sworn and testified as follows:

I am Supervisor of the paystation telephone. We have a paystation telephone at 3d and Townsend Streets in San Francisco, and daily records are kept of calls through that paystation. They are kept under my supervision and I have the records here for January 30th, 1914.

Q. What have you on January 30th with reference to Kearney 5484, if anything? (This question was objected to by defendants on the ground that it is incompetent, irrelevant and immaterial; and the question was by the Court overruled; and defendants duly excepted). A. On the 30th of January, between 3:30 and 3:45 a call for Kearney for 5484 was placed, completed and paid for, and [37] at 4:12 a similar call was placed, completed and paid for. That was at the 3d and Townsend Street station.

Mr. COOK.—We move the testimony be stricken out in relation to these calls placed at that time for that number as being incompetent, irrelevant and immaterial. The Court. The motion is denied. Mr. Cook. Exception.

[Testimony of J. T. Stone, for Plaintiff.]

J. T. STONE was called as a witness on behalf of plaintiff and sworn and testified as follows:

I am a deputy Surveyor of Customs, and have been about sixteen years, and was such on January of this year. I received money from a man named Matthai, and also from a man named Kirchisen; sixty from

(Testimony of J. T. Stone.)

the latter and \$70.00 from the former. Since then it has been in my possession and I have the particular money in my possession now which was given to me by them (producing it).

Mr. PRESTON.—We offer it in evidence. Mr. Cook. We object to the introduction of this money as being incompetent, irrelevant, and immaterial. The Court. The objection is overruled. Mr. Cook. We except.

I received this money in the early part of February of this year, about the sixth or seventh, the sailing day of the "China."

Cross-examination.

I had met these men before, but did not tell them they could keep the money. There was nothing said about money to me. Neither of them told me they expected to get any money. I took the money from them under directions of the surveyor of the port. Mr. Wardell. They were on the wharf, at the end of the gangway. They had just been subpoenaed as witness in this matter. At no [38] time did Matthai tell me he was going to get \$196.00, or any other sum. There was no discussion with me about money one way or the other.

[Testimony of George Williams, for Plaintiff.]

GEORGE WILLIAMS, called as a witness on behalf of the plaintiff and sworn and testified as follows:

I am an inspector of customs, and was such on January 30th of this year. I know quartermaster Matthai. I remember on or about January 30th of

(Testimony of George Williams.)

this year his having passed down the gangplank with a suitcase. I put my mark on it. The suitcase now shown to me is the one with my mark on it. I had instructions to let him pass with the suitcase. I looked at the contents of the suitcase, and it had opium in it; it was in skins, and it was smoking opium and was in the kind of skins which you show me now.

Cross-examination.

The suitcase was lying down flat. The quartermaster pulled up the cover and I removed the cloth, saw the opium was there and passed it in that manner.

Mr. COOK.—Q. You saw the skins? A. Yes, sir. I did not count them and do not know how many there were; I just saw some bladders; I made no examinations to find out what kind of opium it was. I had seen smoking opium put up in that style before. I do not know and did not know from any examination I made, what kind of opium was in the bladders. These bladders look exactly as they did that day; from all appearances from the suitcase and the skins, they look identically the same. I did not put any mark on any bladders. He opened the suitcase, and I reached down and pulled some rags aside and saw some bladders there, and it appeared to me to be opium; I did not taste it, or anything like that; and I did not perforate any of the skins to [39] examine the contents. They told me it was opium, and I understood it was to be passed. The bladders were in the suitcase as they appear here to-day, and the bladders here in this suitcase shown to me look like those that were in the suitcase when I passed the suit-

(Testimony of George Williams.)

case. I concluded that it was opium. My mark on it was "W" with a cross through it. The mark I put on the suitcase indicated that I as a custom inspector had inspected the contents and had passed it as being permitted to land so that a man coming along with mark on it would pass anybody at the gate; that was the effect of the mark that I put on the suitcase. So far as I was concerned, or anybody at the gate at the pier was concerned, Matthai might have taken it anywhere, and not be subjected to any further inspection. Matthai and Kierchisen went ashore together at that time. I had never seen them before I saw them at the gangplank. I was told to pass to German quartermasters.

[Testimony of Joseph Head, for Plaintiff.]

JOSEPH HEAD, was called as a witness on behalf of plaintiff and sworn and testified as follows:

I am Captain of Inspectors in the Customs Service in the port of San Francisco and have been such about eighteen years. I am acquainted with the place known as 742½ Washington Street in San Francisco, and have probably visited the place fifteen times in the last three years. I know the room in the place in which there was a telephone known as Kearney 5484 and it was in that room in January of this year. That room had no number on the door. That room taking the sequence of rooms as disclosed by the numbers on other rooms would be 16; there was another room on this floor that was No. 16. It is across the hall and some distance, probably 10 or 15 feet from this room. I assisted [40] in making

(Testimony of Joseph Head.)

the arrest of Sam Kee, at the corner of Clay and Kearney Streets, and searched his person after he was arrested.

Mr. COOK.—Did you have any warrant? A. Did I have a warrant? Q. Yes, for his arrest? A. I was acting under the direction of the United States Marshal, the warrant was issued and in the possession of the Marshal at the time. I did not have any warrant at the time I arrested him and searched him, nor was the warrant there at that time, nor was the Marshal there.

Mr. PRESTON.—Q. You knew the warrant was issued? A. Yes, sir. Q. I show you this paper, and will ask you whether or not you found that on Sam Kee's person at the time he was arrested.

Mr. COOK.—Objected to upon the ground it is incompetent, irrelevant and immaterial and it was an illegal arrest, and no authority for this man to make an arrest. I demand the return of all papers taken from the person of this defendant either by search warrant or otherwise, the reason being there never was any warrant served for the arrest of this man or used in the arrest of this man. Mr. Preston. There was a warrant. Mr. Cook. There was none used. The Court. The objection is overruled. Mr. Cook. Exception. A. Yes, sir. Mr. Preston. We offer this in evidence as testimony to show that Sam Kee was connected with Kearney 5484, this being a slip of paper on which the words appear in writing "Kearney 5484." Mr. Cook. Objected to as being incompetent, irrelevant and immaterial and no

(Testimony of Joseph Head.)

proper foundation laid. The Court. The objection is overruled. (The paper is marked "United States Exhibit No. 4.") Mr. Preston. Q. I will ask you whether or not at that time you made this arrest, you found on the person of the defendant Sam Kee the paper I herewith show you? Mr. Cook. Objected to upon the ground it is incompetent, irrelevant and immaterial and no proper foundation laid. The Court. [41] The objection is overruled. Mr. Cook. Exception. A. Yes, sir.

I did not know who Matthai was until January 30th of this year: On that day I received two papers from him, and also a slip of paper on which was written the words "Kearney 5484." Q. How did it compare in appearance, handwriting and otherwise, with the paper just introduced in evidence here as having been found on the person of Sam Kee? (Defendants objected upon the ground that it was incompetent, irrelevant and immaterial, and no proper foundation laid on connection made with this party. The objection was overruled and defendants duly excepted.) A. It was similar in general appearance and kind and size of paper, and written in lead pencil, and same style of writing, etc. When I got the first letter from Matthai I took it to Jung Kay, an interpreter in the immigration service in the Custom House for the purpose of translation, and I stayed until I got the translation: The paper now shown to me is a translation of Jung Kay, and it is typewritten on the machine in his office. I got this paper from Jung

(Testimony of Joseph Head.)

Kay, and he gave it to me as a translation of the letter I had taken from Matthai.

(This paper was marked "U. S. Exhibit No. 5 for Identification.")

The second paper you are showing me I have seen before: It is a paper given me by Jung Kay, and purports to be a translation of the second Chinese letter I gave him to translate. I gave him three letters to translate on that day. (The second paper is marked "U. S. Exhibit No. 6 for Identification.") On January 30th, 1914, I saw a suitcase at 3d and Townsend Street depot, which quartermaster Matthai had supposed to contain opium. I did not open it or examine its contents. Later that evening I saw the same suitcase, when inspector Harrison turned it over to me about [42] 8 o'clock, and I kept it till the next following afternoon, Saturday afternoon. When I received it I examined it, and it contained seven skins or bladders filled with opium, and some rags; and when it left my possession on Saturday afternoon the contents was the same as when I received it. I have had considerable experience with opium, and to the best of my knowledge the contents of this suitcase that I had between that evening and January 30th and the afternoon of January 31, was prepared smoking opium; and there is no doubt in my mind that it was prepared smoking opium; it had rags about it and it was about the same as the bladders you now show me, but it had not hardened then to any extent. I am positive that the suitcase here in court is the same suitcase I have been testifying about.

(Testimony of Joseph Head.)

Mr. PRESTON.—I don't believe that suitcase is offered in evidence if the Court please. We offer it now in evidence and ask that it be marked as Exhibit 7. Mr. Cook. Just the suitcase? Mr. Preston. The rags also. They were identified by Mr. Matthai. Mr. Cook. Objected to upon the ground that it is incompetent, irrelevant and immaterial as against all of the defendants, and also that no proper foundation has been laid. The Court. The objection is overruled. Mr. Cook. Exception. (The suitcase and rags are marked "U. S. Exhibit 7.") Mr. Cook. That is just the suitcase and rags, is it Mr. Preston? Mr. Preston. That is all at the present time.

I know that at 3d and Townsed Street depot on the afternoon of January 31st, Matthai did some telephoning; he telephoned first between 3:30 and 4 o'clock and rang up No. "Kearney 5484." I had the slip in my pocket and gave him the number to ring up.
[43]

Cross-examination.

There was no envelope on the paper that I received from Matthai on the morning of January 30th; it was just a single sheet of paper; it was all in Chinese characters and there was no English Street or number on any paper that he gave me at that time. I am positive that when Matthai gave me the paper that I have testified to that it was not contained in any envelope addressed to any particular person or any particular number. There was never any test made of the original package or contents of the suitcase when it was first given to me by inspector Har-

(Testimony of Joseph Head.)

rison: The first test of its contents was made in February within a day or two following the arrest of these defendants. I could not say whether this opium had been in Honolulu before it came to San Francisco. I saw the suitcase on the evening of January 31st at the Potrero Police Station, after ten o'clock, and Mon Hing and Yt Yee was there. I took part in the search along Kentucky Street after I saw the suitcase that evening. When I saw the suitcase that evening there were five skins or bladders of opium in it: Only five skins or bladders were found by the customs officers. I am positive that at the time I gave Harrison the suitcase to take out to the hotel there were seven skins in it. We found no opium of any kind in our search that evening after we left the Potrero Police Station. No United States Marshal or Deputy United States Marshal was with me when I arrested Jung Quey, and took him to 749 Clay Street and there searched him; and no one of those present at the time of his arrest had any warrant for his arrest, and we did not tell him what he was arrested for.

Redirect Examination.

Since the arrest of these parties this suitcase, and its [44] contents, have been kept in what is known as the seizure room of the Appraisers Building.

Q. What is the value of that kind of opium per skin, in the month of February? (Question objected to by defendant as incompetent, irrelevant, immaterial and the proper foundation not laid. Objection

(Testimony of Joseph Head.)

overruled, and defendants duly excepted.)

A. Between \$800 and \$900. Figuring it at 4 tins to a skin, it would be four times \$40.00, about \$160; it might be a little less or more; about \$160.00 a skin. I made the arrest of Jung Quey on February 3d.

[Testimony of Jung Kay, for Plaintiff.]

JUNG KAY, called as a witness for plaintiff and sworn and testified as follows:

I am 50 years old and have been in the United States 11 years. I am official interpreter of the Immigration Station and have been such for seven years at this port. I have made a study of the English language, and am able to translate the ordinary Chinese language into the English language, and the English into the Chinese. On January 30th, 1914, I translated for Captain Head a paper handed by him to me upon which paper appeared Chinese characters; and I made a correct translation, and gave him a copy of the translation; the paper you now show me is the translation I made, and is correct.

Mr. PRESTON.—We offer this in evidence now, and I will read it (defendants objected to the admission of the paper on the grounds that it was incompetent, irrelevant and immaterial, and no proper foundation laid. The objection was overruled, and the defendants duly excepted.)

Mr. PRESTON.—I will read it. (Reading.)
“Jung Quen, Dear Uncle: I am sending an American of the Steamer to bring this [45] paper. Please consult with this man when you see him and the paper

(Testimony of Jung Kay.)

and decide how the goods to be delivered and received. Tomorrow I will send you the goods by this man. By so doing it will not be disappointed. Upon receipt of this note, please send me words by this man, and we will know to be you by seeing the proof. Your nephew, You Ock (secret) from S. S. China."

Q. What is the Chinese character for nephew? A. Nephew is the son of a brother or the son of the cousin of that same generation. Is it customary for a man in China to sign himself "your nephew" when he is not related? (Defendants objected to the question as incompetent, irrelevant and immaterial, and speculative and called for the opinion of the witness. Objection was overruled, and defendants duly excepted.)

A. People that belong to another clan; my cousin's son I address nephew. Q. Do you address anybody

"nephew" who is not related to you by son of a brother? A. No, sir, people that don't belong to the family.

Q. What does You Ock mean? A. That is a man's name.

Q. Did it have something on there to indicate steamship "China"? A. Yes, sir.

Q. What is "secret" in parenthesis here. A. Secret;

only these people; not leak out, but this should be kept secret. There was some Chinese character on

the paper that caused me to put the word "secret" there as a translation. On the same day I made another translation, and the paper you now hand me is

that translation of the other paper handed me by Captain Head.

Mr. PRESTON.—We offer it in evidence. (Defendants objected to its introduction on the grounds

(Testimony of Jung Kay.)

that it was incompetent, irrelevant and immaterial and the proper foundation not laid: objection was overruled, and defendants duly excepted.)

Mr. PRESTON.—I will read it. (Reading.)
“To Yick Fat: Your [46] letter has been received. From Jung Quey.”

Mr. PRESTON.—Q. I show you another paper, heretofore marked for identification as exhibit 4 across the back, on which are numerous black lines, which paper appears to be in Chinese characters. Will you kindly interpret that in English now, that reporter may get contents. (Objected to by defendants as incompetent, irrelevant and immaterial, and the proper foundation not laid: Objection was overruled, and the defendants duly excepted.)

Witness reading. “I now send a man to bring goods, 28 cans upon receipt of same pay the bearer \$196.00. Answer immediately and the man bring it back tomorrow. Please come and talk together. From Yee Ock.”

The word You Ock on this paper is the same as I translated as You Ock on the other; it is the same characters.

Cross-examination.

I have no independent *now* of the kind of paper that was used in the other things that I translated.

[Testimony of Yt Yee, for Plaintiff.]

YT YEE (one of the defendants) called as a witness on behalf of the plaintiff, sworn and testified as follows:

I speak English, and am a student, and am now a

(Testimony of Yt Yee.)

student in the Affiliated Colleges, and have been for two years, and for one year before that I was attending the College of Physicians and Surgeons. I was pursuing a course in dentistry, and this is my last year, and I have been married a little over a year. I did not know Li Cheung or Yick Fat until after I was arrested. I never talked to either of them until after I was arrested. I never had any business dealing with the defendant Jung Quey. I know the defendant Mon Hing. On the evening of January 31st of this year I went out towards the [47] Potrero Police Station with Mon Hing. We started from town about half-past seven. I did not know where that police station was at that time. I know now that it is out near 20th and Kentucky Streets. I was told we left the car on 20th and Kentucky Streets. Just as Mong Hing and I got off the car there to look around a little, we saw a man dressed in a uniform approaching us from across the street, and he invited us to have a drink at a neighboring saloon. The man I met that night in uniform is the quartermaster Matthai who has been a witness at this trial. By uniform I mean a steamship uniform. I had never met him before, and never had any understanding to go out there and met him that night. I was told that the saloon was the one in the Olympia Hotel, and that is about a block below where we got off the car. After we had the drink Matthai said, "Come upstairs and I will show you fellows something." And Mon Hing and I followed him up to a room. I stood at the doorway. I saw the quarter-

(Testimony of Yt Yee.)

master pull a suitcase from under the bed and I saw him open it. I did not know what was in the suitcase, it was quite a distance from me, and the quartermaster said "Did you bring the money," and Mon Hing said no, and then he turned around and asked him what money. That was about that happened in the room there that I recollect, and after that we turned around to go out. I went out first, and the quartermaster escorted us to the head of the stairs. I went downstairs with Mon Hing, and just as I got to the foot of the stairs I went into the toilet between the foot of the stairs and the bar and Mon Hing went out, and I told him to wait for me outside and I went into the toilet. Afterwards I met him on Kentucky Street. When I met him we were looking for the place where we were going to. That night we were supposed [48] to visit a friend. I never received or took any suitcase from the quartermaster Matthai at any time or place. I was arrested that night. Mon Hing and I were walking down Kentucky Street towards town. We had been waiting for a car, and the cars did not seem to stop; and we missed several cars until we got down to the curve of the railroad track. We stood there for a few minutes waiting for a car, and it was not more than two or three minutes, when I heard a voice behind me, and a man pointed the muzzle of a gun at my belly, and said "Hold up your hands." Of course I held up my hands pretty quick. I took no chances. I threw up my hands. We were not sitting on a bench there, but

(Testimony of Yt Yee.)

were both standing, and Mon Hing threw up his hands too. Right after the man told us to throw up our hands, he felt around me with the other hand; all this time, he pointed the muzzle of the gun at me, and he also searched Mon Hing, and then he ordered us to walk up the track. I did not have any skins, and he did not find any skins on me. I was too scared to notice anything he did. He had a pistol pointed right close to me. He followed behind us all the way to the Potrero Police Station where he made us walk. I did not know he was an officer at that time, and did not know his name, but now know that his name is Olivier. I made several attempts to find out who he was. I said, "If you are going to rob us, go ahead and take our money, and don't keep marching us with our hands up." He said, "Go ahead, don't make a move, or I will kill you." We went ahead, until a block from the station I asked him again who he was. I says, "If you want our money, go take it." He says, "Oh, if you are not satisfied," and he threw back the flap of his coat, and at the top of his suspenders I saw some kind of a badge. I don't know what it was. It was quite dark. It was [49] a block or a block and a half from the police station. When we reached the police we were searched again in the presence of four or five officers in the station. When we were walking to the station we walked partly on the sidewalk, and partly in the middle of the street. We were kept at the police station about an hour and a half and then we were taken back by the officers along Kentucky Street. I

(Testimony of Yt Yee.)

found out later that Captain Head, Inspectors Inlow, Harrison and Olivier were among those who took us back along Kentucky Street. They took us to where we had been arrested, and they left us with Inspector Harrison, and the others went and searched all around the vicinity; and then they took me to my room, and searched my room. I never at any time or place agreed with Yick Fat, Li Cheung, or Jung Quey, or Mon Hing, to assist in receiving, or concealing, or receiving and concealing any opium prepared for smoking purposes. After we were arrested Mr. Wardell questioned us in his private room separately and I made a statement to him as I have testified here. I never gave any money to Matthai and did not see Mon Hing give him any money.

Q. For what purposes were you going out towards the Potrero that night with Mon Hing? A. There was a friend of mine who had been East *studying* aviation, and he just got back a day or two before and he was my former roommate. I thought I would like to go out and see him; not knowing the place, or where to go to to find the place, I asked Mon Hing to go along. I met him in Chinatown, and told him about this, and that is the way I came to be on that car going out there.

Cross-examination.

I am an American-born Chinese; 20 years old; born in Sacramento; and have lived in San Francisco since I was ten years old. My wife lives in Stockton, and I live here at 883 [50] Sacramento Street; it is a

(Testimony of Yt Yee.)

Chinese student's club. I know a man named S. Chang; he is a friend of mine who belongs to the Club, and I have been told that he is a son of Sam Kee. I have known Sam Kee as Jung Quey. I learned that Chang was a son of his after my arrest. I did not know Jung Quey until after my arrest. Mon Hing lives at the same Club with me, and did in January of this year; he had been living there quite a while since he came back from the North about a year ago. I am going to school, and am dependent upon relatives to support me and my wife. The friend's name that I was going to see that evening is Lim. I did not see him that night, nor for some time after as I think he went away. I think he is in town now. I told him that I was looking for him that night afterwards when I met him. He lived out in the Potrero near Butchertown; I don't know the number. I never had been out there, and that is why I asked Mon Hing. I did not know then what street or number it was, but that he lived there where there was a poultry ranch. We took the car at Clay and Kearney Streets to go out Kentucky Street. I did not meet Matthai after I left his room in the hotel at any time or place that evening. The Lim that I was going to see that evening lives with his father and family there, and I do not know any other Chinese family in that section that lives there.

[Testimony of Louis Henry Grau, for Defendants.]

LOUIS HENRY GRAU, called as a witness on behalf of defendants, sworn and testified as follows:

I am a teacher; I conduct the Lyceum, a private

(Testimony of Louis Henry Grau.)

school in San Francisco, which is now located at 376 Sutter Street. I know a number of Chinese in San Francisco, and I have fifty or sixty that attend my school; and I have conducted this school since 1894. [51] I have known the defendant Mon Hing eight years. I know his general reputation in this community for truth, honesty and integrity, and have never heard anything against him; and such reputation is good. He attended the school in 1906, about July.

Cross-examination.

I run a preparatory school for the university. Mon Hing attended school for about two years, and he went to the Oregon College of Agriculture in Conalis in 1909. I don't know what he has done since then. From time to time he has come to see me. I saw him last Friday, and about two months before that. I never heard of his being mixed up in any opium scheme.

[Testimony of C. M. Landers, for Defendants.]

C. M. LANDERS, called on behalf of defendants, and sworn and testified as follows:

I have held the position of purser on the steamer "China," running between here and China, and was purser on that steamer on a voyage from China to San Francisco on her arrival here January 28th, 1914; and as purser I had charge of paying the crew. I knew a man on the steamer on that trip named Ah Fat, who was the quartermaster's boy; he is a mess-boy, they call him, and assigned to the quartermasters Matthia and Kierchisen. He deserted the

(Testimony of C. M. Landers.)

steamer at Nagasaki; I do not remember the exact day. I remember paying the quartermasters off on that trip. And Ah Fat left with us with the steamer on the return trip, and did not come back on the steamer here again. He left the steamer on that trip at Nagasaki. I know Li Cheung who is the storekeeper's boy, and he is not connected with the quartermasters at all.

[Testimony of A. V. Kirchisen, for Plaintiff.]

A. V. KIRCHISEN, was called as a witness on behalf of plaintiff and sworn and testified as follows:
[52]

I was quartermaster on the steamer "China" in January of this year, and had been on her 18 months. I knew Li Cheung, the storekeeper, and he was on board the "China" in January of this year. His work called him to the fore part of the vessel where the ship's stores are, down below the main deck. I had a conversation with him about opium in October and November, 1913. Q. Where was it? (Objected to by defendants upon the ground that it is incompetent, irrelevant and immaterial, and prior to any date alleged here, and prior to the importation of any opium as to the conspiracy which is charged. Objection was overruled, and defendants duly excepted.) A. In the storekeeper's room, here in San Francisco, on the trip before. (Mr. Cook. The same objection goes to all this line of testimony, which is objected to under the ruling of the Court.) Q. Well, the trip on which she came in in January, did you have any conversation with him about opium before you came to

(Testimony of A. V. Kirchisen.)

San Francisco? A. Yes, sir, between Yokohama and Honolulu. Q. Had you or not made known to the custom's officers any fact in connection with Li Cheung before you arrived on this last trip? (Defendants objected to the question upon the ground that it was hearsay; the objection was overruled and defendants duly excepted.) A. Yes, sir. Q. About how many conversations did you have, if you had more than one on the trip from Hong Kong to San Francisco? A. About half a dozen times. Q. What was the tenor or substance of these conversations? (Mr. Cook. The same objection.) A. Taking opium ashore for him. He told me he had plenty of opium on board.

When we got into port I had further conversation with him about it. I furnished the paper to him for him to write a letter upon, and he gave me a paper about the day after we came in, and I communicated with inspector Harrison about it, and I took it up [53] to Grant Avenue. It was in Chinese. The Chinaman there gave me a piece of paper to take back to the storekeeper's boy, which I did. The place where I took the paper was Wong Yung Co., at 814 Grant Avenue.

Also when my partner was in the room and the storekeeper's boy was in the room, the suitcase here and the opium was in the room, packed up in the suitcase. The suitcase was mine. Li Cheung was in the room when I came in, and Matthai was also there. The opium in the suitcase was in seven skins in the shape of sausage and I saw the suitcase and the opium

(Testimony of A. V. Kirchisen.)

leave the ship, and *when* along with it. I was taken first to the Southern Pacific Depot at 3d and Townsend Street, and I have not seen it since until coming into court, and do not know what happened to the suitcase and contents after that time.

Cross-examination.

I saw Ah Fat, our mess-boy on the deck within 25 or 30 feet of our room on the afternoon that I saw this suitcase, and skins in the room, and he had a sack in his hand. That was a short time before I saw Li Cheung in the room, within a minute or a minute and a half. I did not see who brought that opium into Matthai's room, and could not say how it got there or where it came from. I had an understanding with Matthai, my partner, that I was going to get half of the money that he received. I could not say whether I told the customs officers that or not. As soon as I got the money I spent it. I don't expect to do anything for nothing. The first I knew of Matthai was in January, 1913, I never knew him before that: I never knew him in the old country; I did not suggest to him that he get a job on the steamer, he came down to the steamer and asked me for a job. When I went to 814 Grant Avenue I got a slip of [54] paper but I don't remember if I showed it to the Customs Officer or not. I went up to 814 Grant Avenue the trip before. I only brought a note back one time. On January 28th of this year.

[Testimony of D. F. Belden, for Defendants.]

D. F. BELDEN, called as a witness on behalf of defendants, sworn and testified as follows:

My business is real estate here in San Francisco, and has been ten or twelve years, under the firm name of Strong, Belden & Barr. I know the defendant Jung Quey, and have known over a period of from six to seven years, and have known him in San Francisco during that time. I know his general reputation in his community of truth, honesty and integrity, and it is good.

Cross-examination.

Jung Quey business is that of merchant, and his place of business is on Dupont Street I believe, and I would say probably I know half a dozen white persons that know him and one Chinese. The white people live in Nevada, and some in Oakland. I know *is* general reputation in San Francisco because it followed him from the place he originally came from, which as I understand it was Nevada. Q. I will ask you right now if it is not a part of his general reputation that he is in the opium business. A. Not to my knowledge. Q. I will ask you if it is not a fact that he was in the opium business in Nevada? (Mr. Cook. Objected to and I assign it as a prejudicial error on the part of the District Attorney.) A. I never heard of it, I never heard of his connections with opium at all. Q. Is it not a part of his reputation that opium has been found in his room time and time again? (Mr. Cook. The same objection.) [55] A. Never.

(Testimony of D. F. Belden.)

Q. Is it not a part of his general reputation that he has sent for customs inspectors and other people, and tried to enter into unlawful combination with them for the purpose of getting opium? A. I never heard of it. I have known of his reputation from his associations from his connections with my father-in-law in Nevada, in the railroad business furnishing contract labor. My father is general superintendent of the Southern Pacific Railroad and I believe Jung Quey furnishes Chinese labor to the railroad. I never heard anything against his reputation.

[Testimony of Charles W. Brown, for Plaintiff.]

CHARLES W. BROWN, called as a witness on behalf of plaintiff, and sworn and testified as follows:

I am a police officer in San Francisco, and was such in January of this year. I remember on the night of January 31st, two Chinese having been arrested near the Potrero Police Station; there were brought there to the station at 20th and Kentucky Streets by Custom Inspector Olivier. After that time I made a search for opium with Inspector Olivier and we found five skins. We started to search when we left the station at 20th and Kentucky Streets and after we passed 16th Street we walked down Kentucky Street on the east side of Kentucky, and after we passed 16 Street right alongside of the viaduct we found three or four clothes lying near the edge of the curve, Olivier took the cloths up and they were stained with a black stain, and smelt of opium and we continued down as far as 4th Street, and we turned up 4th Street from Kentucky up towards the

(Testimony of Charles W. Brown.)

bridge, and there was a wooden seat or stand between two poles on the North side of 4th Street just after turning from Kentucky Street which is used as a seat for passengers, and there were three skins of opium on this stand or seat. We had [56] another officer with us who had charge of the electric light; it was quite dark in the vicinity and we were using this light, and we worked our way back. Inspector Olivier took charge of the three large skins and we were walking and searching in the vicinity, and in the middle of the car-track on Kentucky Street, near Fourth Street we found two more skins, I should say about 75 or 100 feet from where we found the three skins; it was right in the center of the East car-track: We then continued on and searched, and alongside of a board fence on the East side of Kentucky Street we found a brown suitcase, about three or four hundred feet from where we found the two skins in the center of the car-track. We first found the rags, and then the three skins and then coming back we found two skins, and then the suitcase. The suitcase you now show me is the same one, and I am positive the rags are the same, and the five skins which you now show me were similar to the five skins of opium which we found, except that they were more puffed out when we found them, and the Customs House officers took charge of them at the Potrero Station.

Cross-examination.

I have been a police officer over at the Potrero Station for some time, and am quite familiar with

(Testimony of Charles W. Brown.)

the different points along Kentucky Street between 4th and 20th, and also beyond that on Kentucky Street out toward Butchertown. If you keep going along Kentucky Street you come to Butchertown. Mon Hing was one of the men that was brought into the Station that night. I had seen him before out toward Butchertown, and I know Lim who lives out towards Butchertown, and I have seen them together. Lim's family live about five blocks from the Potrero Station, out along Kentucky beyond the Potrero Station, where the Chinese ranch is. I know Lim, the Chinese Aviator who went East, and that is the [57] one who lives at that Chinese ranch. The distance from 20th and Kentucky to where we found the three skins, is pretty close a mile. The distance from 20th and Kentucky down to Mariposa Street, where the viaduct begins would be a little over a third of a mile. When we started the search we expected to find all the stuff where we found the rags, but Mr. Olivier did not direct us to any place to find the suitcase, but we found it on a general search on the way back. The three skins we found were on the board between the two post and were not lying on the ground underneath. That board between the two posts is a resting place for people to sit down to wait for the car. The seat I should judge was more than a foot long, and about ten or 12 inches wide, and the three skins were lying lengthwise on the seat. They were laid parallel with the sides of the seat, and side by side. I should say that the two skins that were subsequently found in the

(Testimony of Charles W. Brown.)

center, between the car-track, and the street, were found at a distance of about 200 or 300 feet from where the skins were found. I should judge that the fence near which we found the suitcase was about 500 feet from where we found the three skins. It was between half past eight and nine o'clock when the defendants Mon Hing and Yt Yee were first brought into the Potrero Police Station, and a search was made of them then and nothing like these skins found on them.

Redirect Examination.

The Chinese farm, or duck ranch, belonging to Lim, about which I testified, is on Minnesota Street between 23d and 24th Streets, that is about six blocks from the Olympia Hotel.

Recross-examination.

The Olympia Hotel is on 20th and Illinois Streets, then the next parallel with Illinois Street is Kentucky Street, and then Tennessee Street and then Minnesota Street. In order to [58] get to 23d and Minnesota Street you would go along Kentucky Street to 23d, and then turn two blocks west to Minnesota Street. The Kentucky street-car would be the nearest car-line and most direct route that you could take from Chinatown to get there.

[Testimony of Thomas R. Harrison, for Plaintiff.]

THOMAS R. HARRISON, called as a witness for plaintiff, and sworn and testified as follows:

I am an Inspector of Customs and was such in January and February 1914, and at that time was

(Testimony of Thomas R. Harrison.)

stationed at the Port of San Francisco, and the Pacific Mail Dock are on pier 42 and 44 in San Francisco, and the Olympia Hotel, and 4th and Kentucky Streets are in San Francisco, and all of said places are in the Northern District of California.

Q. Have you ever had any talk with either of these quartermasters, Matthia or Kirchisen prior to the incoming of the steamer "China" in January of this year? (Defendants objected to the question as incompetent, irrelevant and immaterial and that any conversation that this man may have had with the quartermasters on any trip previous would be hearsay: Objection overruled and defendants duly excepted.) A. Yes, sir. The first information I had was on the trip previous, the trip the opium was landed; that is previous to January 26th of this year. I saw some opium that was taken off the "China" on the 29th of January, or supposed to be taken off that day. I saw it first at the corner of 3d and Townsend Streets. I saw the grip that the opium was supposed to be contained in when it left the ship, that is when it came over the gangway. Matthai was the man who had the grip. I did not see it opened until it was at 3d and Townsend Street, and it had seven skins of opium in it. [59]

Q. What kind of opium was it? (Objected to by defendants upon the ground that it was incompetent, irrelevant and immaterial and the proper foundation has not been laid: The objection was overruled, and the defendants duly excepted.) A. It was prepared smoking opium. I have had a great deal to do with

(Testimony of Thomas R. Harrison.)

the opium room, and was in the opium room for nine years; that is where all the opium was seized, all the duty paid opium came in to be stamped. That was before this present law was passed.

From 3d and Townsend Street we took the suitcase and contents to the Olympia Hotel at 20th and Illinois Street, and I had charge of it until I turned it over to the property that night. The next day I again took it to the Olympia Hotel, and at that time seven skins were in it. After the arrest the five skins that were recovered were put back in the suitcase which was in my possession until the following day when I turned it over to the seizure clerk in the Appraiser's Building, and I brought it up to court, and the suitcase which you show me is the same suitcase, and the rags and other things that are in it now appear to be the same things, including the skins. At the Olympia Hotel on the evening of January 31st I was concealed in a closet in Matthai's room in the Olympia Hotel. I then heard a portion of a conversation between Matthai and some parties in the room. I heard someone say "have you the money" and the reply I heard was "yes." And the next part of the conversation was "well, here is the opium. Do you wish to see it." That is as much as I could hear of the conversation. I did not see any of the persons, and should judge they were about ten feet from me, and any other conversation was too low for me to hear. After that I went out on the street, and saw Mon Hing there as he was crossing [60] 20th Street to the south side going west toward Kentucky,

(Testimony of Thomas R. Harrison.)

and I saw Matthai on the street, and at that time he had a suitcase. I did not see him take any suitcase out of the room. I had preceded him out of the room. At that time he was going west up 20th Street, but Mon Hing was on the opposite side of the street.

Cross-examination.

I could not say that any Chinese people were in the room, and I could not say it was Matthai who was in the room. I did not hear any one say "you will have to take it down into the street, I cannot take it here." The last time I saw the suitcase there was seven skins in it, and that was before I went into the closet, and when I came out of the closet I did not look to see whether Matthai had the suitcase or not. He was not with me when I went downstairs. I saw a Chinaman come out of a saloon at 20th and Kentucky Street, and searched him, and Mon Hing was on the corner, but I did not search him. That was the last I saw of Matthai that night.

Q. What did you search this Chinaman for that came out of the saloon at 20th and Kentucky Street? (Objected to by the prosecution as immaterial. Objection sustained.) Q. In what direction did that Chinaman go? (Objected to by the prosecution for the same reason. Objection sustained, and defendants duly excepted.) Q. Is it not a fact that you thought this Chinaman had some of the opium? (Objected to by the prosecution for the same reason. Objection sustained and defendants duly excepted.)

The last time I saw Matthai he was on 20th Street

(Testimony of Thomas R. Harrison.)

about ten feet from the hotel going toward Kentucky. I did not see Yt Yee around there at all. I did not go into the toilet, and did not know whether he was there or not. I waited around there [61] about twenty minutes and did not see any other Chinese or Olivier so then I went back and reported to Mr. Head. I went back in the car that went along Kentucky Street toward 4th. I should judge in the neighborhood of ten o'clock I had a telephone message that Olivier was at the Potrero Police Station, and had two Chinaman arrested out there, and then I went out there. I reached the assembly room where I met Captain Head about nine o'clock that evening, and it took me about 10 or 12 minutes to get down there on the car from 20th and Kentucky Street.

[Testimony of Yick Fat, for Defendants.]

YICK FAT, was called as a witness on behalf of defendants, and sworn and testified as follows:

I was one of the crew on the steamer "China" when she came here on January 28th of this year, and I am the Yick Fat that was acquitted by the jury of the charge set forth in the indictment in this case. I was the doctor's boy on the steamer. I know the quartermaster Matthai. I also knew Ah Fat, who was the quartermaster's boy. I saw Ah Fat on the deck of the "China" after she came in go into the quartermaster's room. He went to the messroom; get something, open something, and get some opium sausage, and go to quartermaster's room. Li Cheung was not with him, and did not take anything into the quartermaster's room. I remember the day the

(Testimony of Yick Fat.)

steamer was going to sail to China, and I remember the time that Li Cheung and myself were going to be taken ashore from the vessel. At that time I saw Matthai on the deck, and I also saw Ah Fat there, and I heard Matthai speak to Ah Fat.

Q. What did he say? A. Quartermaster pass along and speak to Ah Fat, Chuck Fat, that is Chuck Fat and Ah Fat are the same, and he was quartermaster's boy. He say, "Ah Fat, when you come to [62] China, you leave ship, don't come back; trouble over the stuff."

Q. He told him when he got to China to leave the ship? A. Yes, he say, "Don't come back, trouble over the stuff; keep still."

Q. Do you remember quartermaster's giving you any piece of paper, a letter? A. Yes, sir, he give me paper; I give him back, give Ah Fat back; don't belong to me. Q. You never gave it to Li Cheung? A. No, sir.

Cross-examination.

I testified as a witness upon the trial when I was acquitted.

Q. Did you say at that time that you ever saw this opium? (Objected to by defendants upon the ground that it was incompetent, irrelevant and immaterial and the question might not have been asked him. Objection overruled.) A. Yes, sir. I see Ah Fat.

Q. Didn't you swear at the last trial you did not see this opium, and did not know anything about it, and never saw anybody with opium? A. Yes, sir. I say first time I see Chuck Fat.

(Testimony of Yick Fat.)

Q. Didn't you swear at the last trial you did not know anything about opium, never heard of it, and never saw any opium? (Defendants made the same objection as to previous question. Objection overruled and defendants duly excepted.) A. Chuck Fat speak to me opium sausage.

Q. Why didn't you tell that at the last trial? Mr. Cook. Objected to as being incompetent, irrelevant and immaterial; he was not asked the question.

A. He *rose* it up together Chuck Fat speak to me opium sausage take it to quartermaster.

Q. Why didn't you swear about these sausages at the last trial? (Objected to by defendants upon the ground that it was [63] incompetent, irrelevant and immaterial, and it has not been shown that he was asked anything about it, or that there was any such question asked, and I assign the statement of the District Attorney as prejudicial error. He will not find anything in the record like that. Objection overruled.) A. It was rolled up, this crossed over that. Chuck speak to me. I saw Chuck Fat. Him opium sausages, he speak to me.

Nobody told me to tell about seeing Ah Fat with the sausages. Last time you asked me you see this man; I say I did not see him. Chuck Fat roll it up all together he crossed on the outside; I could not see inside. He speak to me.

I saw the mess-boy take something to quartermaster's room. He took some cloth and wrapped up some things and he said it was opium and for me not

(Testimony of Yick Fat.)

to speak out. I saw the cloth, but not the opium, and he said it was opium. He was in a hurry. I did not see what he wrapped up. He told me that he was in a hurry.

Q. Did you ever see opium fixed up like that before? (The District Attorney showing the witness some of the bladders or skins in the suitcase.) A. No, sir, I have never seen any put up in sausages like that. I spoke about sausages because the boy told me that they were in opium sausages. I never saw opium sausages. All I know is what he told me.

Q. Why didn't you tell us about having seen this boy with this package at the last trial when you testified. (Objected to by defendants as being incompetent, irrelevant and immaterial and not cross-examination. Objection was overruled, and defendants duly excepted.) A. You never asked me.

Q. I will ask you if this question was not asked you, and if you did not give this answer, by your own counsel. Talking [64] about the talk with the quartermaster.

"Mr. COOK. Q. How long after that was it on that day that you and Li Cheung were arrested? A. The same day she started off. Q. She sailed at one o'clock, didn't she? A. She sailed at 1 o'clock. Between half-past eleven and twelve I was arrested. Q. That was the first you knew of anything about this opium smuggling charge that you were arrested for? A. I did not know anything before that; and when he arrested me I did not know what it was for."

(Testimony of Yick Fat.)

Did you give these answers to these *question* at the last trial?

Mr. COOK.—I submit that is not contrary to anything this witness has testified to, and I object to it as being incompetent, irrelevant and immaterial, and not proper cross-examination. The Court. The objection is overruled. Mr. Cook. Exception.

Mr. PRESTON.—Q. He can read English; let him read it. He said he could. Can't you read English? Didn't you swear at the last trial that you could read English? A. A little bit.

The INTERPRETER.—To question 1 he answers yes. She sailed at one o'clock, didn't she? Yes, his answer is. Yes, I was arrested between 11 and 12. I so answered as stated.

Mr. PRESTON.—Q. Why didn't you tell us that this mess-boy had been carrying opium towards the quartermaster's room at the last trial?

Mr. COOK.—Objection to on the ground that it is incompetent, irrelevant and immaterial, and not proper cross-examination, and it affirmatively appears by the questions propounded that there was no such question asked. Objection was overruled, and defendants duly excepted.

A. When did you ask me? You did not ask me and therefore I did not answer. [65]

Q. Did you see Chuck Fat with a letter at all? A. Yes, sir, he gave it to me and I didn't *not* receive it. I did not take possssssion of it. Q. What did you do with it? A. I gave it back to him.

Q. I will ask you if I did not ask you the following

(Testimony of Yick Fat.)

questions and you gave the following answers at the last trial?

“Q. Did you get a letter from Sam Kee? A. No, sir. Q. Sam Kee did not write you a letter? A. No, sir. Q. Did anybody give you a letter? A. No, sir. Q. Did you ever see a letter Sam Kee signed? A. No, sir. Q. Did mess boy give you a letter? A. No, sir. Q. Never gave you a letter? A. No, sir, never gave me a letter. Q. All you know about this is you heard this man say look out for the stuff. A. I did not know.”

(Mr. COOK.—Objected to as not being contrary to any evidence.) A. I don't remember.

Mr. PRESTON.—We offer it in evidence.

Mr. COOK.—Objected to as not being contrary to any evidence. I think he is bound by it. The objection was overruled and the defendants duly excepted, and that part of the record that was read was admitted in evidence.

[Testimony of Mon Hing, for Defendants.]

MON HING, was called as witness on behalf of defendants, and sworn and testified as follows:

The first time I met Matthai was Friday, January 30th on Grant Avenue and Clay Streets. I left the National Drug Company at Stockton and Grant Avenue with a number of friends and walked from there up towards Sacramento Street, and I saw Sam Kee and Matthai standing on the corner. Sam Kee saw me and called me to come over to him. He told me to ask Matthai what he says. I asked the quartermaster in English, who spoke to me in English. Sam

(Testimony of Mon Hing.)

Kee spoke to me in Chinese. He asked me in [66] Chinese to ask what the quartermaster wanted. I asked the quartermaster what was wanted and he said he would let Sam Kee know by half-past 3 or 4 that afternoon. He did not say what he would let him know. Sam Kee did not *talk* in English to the quartermaster while I was there. He told me to interpret for him in Chinese. That was the substance of all the conversation that took place at that time between me and him. Two or three friends of mine were with me, they were Chinese. Yt Yee was not there at that time. I was just asked to interpret, and that happens lots of times in Chinatown. I never got any telephone message or talk from the quartermaster or from Sam Kee about any opium at all. I never sent any letters or had any communication with Li Cheung or Yick Fat on the steamer "China" about sending any opium ashore. On January 31st I met Yt Yee about 7 o'clock in the evening at a drug store at Grant Avenue and Jackson Street.

He said he wanted to go down to see Lim; he did not know the place and asked me if I knew, and I told him I did. I knew Lim, he just came back from the east; I knew him a long time; we were boys together. He was an aviator, and Yt Yee asked me if I knew where he lived, and I said I was down there eight or nine years ago, and I said I thought I knew the place now, and I volunteered to take him down. We got on the car at Clay and Kearney Street, and went down to South San Francisco, and left the car

(Testimony of Mon Hing.)

at 20th and Kentucky streets. That was the only lighted street in that part of the city, and I had not been down there for so long I got off there to inquire about it, because we would not meet anybody after that street in that district. As soon as we got off of the car we walked up to the corner drug store and a man in uniform from across [67] the street walked toward us. I knew him when he came up to me, as the same man that I spoke to on Grant Avenue and Clay streets. He came up and shook hands with me and told us to go down and have a drink with him, which we did at the Olympia Hotel. He then asked us to go up to his room, and as soon as we got up to the room he took a suitcase from under the bed, and opened it up and laid it on top of the bed, and asked me if I brought the money, but I have forgotten the exact words he used at the time. I did not have any sum like \$196.00 with me at the time, and I never gave him any money. He never gave me or Yt Yee in my presence the suitcase shown to me in the courtroom here with any skins of opium in it like that; and he never gave either of us any suitcase. I did not see him again that night after I left the room with Yt Yee. When we went out Yt Yee went into the toilet and he asked me to wait outside for him on the street. I waited for him on the corner of 20th and Kentucky streets, on the side opposite the drug store, towards 21st street. I think I waited there ten or fifteen minutes, and after I waited awhile and did not see him I went on the opposite side to look for him, and walked down Kentucky street toward 19th

(Testimony of Mon Hing.)

and I met him on Kentucky Street, and he said after I met him "funny about that fellow asked us for money," etc., and he says he wanted to go home and did not want to go on that trip to Lim's house. He suggested to take a car home from there; seeing there was no cars stopping, and the only place we saw the cars stop was down at that curve where the light was, we walked down toward that place to take the car. While we were waiting for the car a man came up to us, whom we afterwards found to be Officer Olivier, with a gun in his hand, and told us to hold up our hands. He [68] came from behind us. We were standing near two posts where a board is placed, but we were not sitting on the seat. We had not placed anything on that seat at all. We were about 20 feet from that seat and standing right near the car track to take the car. When he told us to hold up our hands we did so. He searched both of us and felt around to see if we had anything on us, but found nothing. He took us back to the police station, and made us walk with our hands up, and we were searched again when we reached the Potrero Police Station.

Cross-examination.

I was born in Chinatown in San Francisco, and am 25 years old. I live at 883 Sacramento Street, and have been living there about a year. Yt Yee has also been living there. I know Sam Kee through his son. I know who he was; I never spoke to him very much except to bow to him when I met him on the street. I work for the Wong Hing Ling Company, 945 Grant

(Testimony of Mon Hing.)

Avenue, and do not work at 742½ Washington Street. I am learning the tailoring trade, and was working there in January of this year. I don't know that Sam Kee can talk English as good as I do, but I do know when I walked up to him he asked me to interpret for him, and to find out what Matthai wanted. After interpreting for him I did not look to see which way Sam Kee went, but I was with another friend of mine and walked away.

I have known Lim about 15 years, and he is an aviator, and I used to go to school with him, and know his father and family, and know that he lived about two blocks from 20th Street, but did not know the name of the street. I have driven around on his one-horse butcher wagon with him.

I did not know what was in the suitcase at the time Matthai showed it to me in his room. He never told me what it was, and I never saw stuff like that before, and I thought [69] it was kind of funny that he asked me about money. I was very much surprised when we were arrested.

[Testimony of James W. Finn, for Defendants.]

JAMES W. FINN, called as a witness on behalf of defendants, sworn and testified as follows:

I am in the wholesale liquor business with the firm of Louis Taussig and Company in San Francisco. I know the defendant Jung Quey as Sam Kee. He has had an account with our firm for over 20 years, and I think I have known him for six or seven years. His business with us was in Nevada, where he was a

(Testimony of James W. Finn.)

storekeeper. He has visited our store occasionally here, and I have heard of his being here in San Francisco for the last year or two, and we have always considered him a good man, and entitled to credit.

Mr. COOK.—Q. You know what the general reputation of a man is, as to whether it is good or bad; you know generally what that means? A. Yes, sir.

Q. You know whether a man has a good reputation in the community? A. Yes, sir.

Q. You have an idea how John Doe or Richard Smith has a good reputation? A. Yes, sir.

Q. You understand what I mean by a man having a good reputation; that is, Mr. Preston objects because you do not know the meaning of that. Do you know the reputation of this man in this community for truth, honesty and integrity?

The COURT.—Answer yes or no. A. No, sir.

Q. What do you know? A. In a business way.

Q. You know his general reputation in a business way?

A. We have had occasion and have had a lot of business dealings with him, so much so that he has the full limit of credit.

Mr. PRESTON.—I move that go out. [70]

The COURT.—Let it go out.

Mr. COOK.—Q. Didn't you make any investigation about him as the credit man of the firm? A. Never had occasion to. Q. You never heard anything against his reputation? A. No, sir.

Mr. PRESTON.—We move that it go out. The

(Testimony of James W. Finn.)

Court. Yes. Mr. Cook. Q. Did you ever hear anything against his reputation? Mr. Preston. The same objection. The Court. The same ruling. Mr. Cook. Exception. I understand that our courts have held that it is the best kind of reputation, never to hear anything against a man.

The COURT.—He says himself he does not know what it is; that ought to end the matter.

Mr. COOK.—Q. Have you ever heard his reputation discussed?

Mr. PRESTON.—Objected to as cross-examination of his own witness. The Court. The objection is sustained. Mr Cook. Exception.

Q. Is Mr. Taussig in the city? A. No, sir, he is in Plumas County at present.

[Testimony of Li Cheung, for Defendants.]

LI CHEUNG, called as a witness on behalf of defendants, sworn and testified as follows:

I was a member of the crew of the steamer "China" arriving about January 28th of this year in San Francisco. I knew a mess-boy of the quartermaster's on that steamer named Chuck Fat. (The witness here requested permission to testify through an interpreter.) I remember that on Thursday or Friday I was working in the storeroom, and the quartermaster's boy Chuck Fat he came down to the storeroom, and he said "Please come up and write a letter for me." I said I did not have time and for him to bring the paper and pencil and I would write for him. He said "All right," [71] and he asked me

(Testimony of Li Cheung.)

to go up to the quartermaster's room and to wait there for him, which I did. He went to the mess-room and came back; he carried one package with him and came into the quartermaster's room with it with me, and at that time the quartermaster Matthai was in the room. And then the quartermaster gave me some paper, and I said to Chuck Fat, "What do you want?" and he said, "I got something to send ashore"; and I said, "What thing?" and he said, "Never mind"; and he said, "I got 28 cans in skins, and one skin to four cans, and I send them ashore; and that a man said he would give \$7.00 apiece for the quartermaster, and altogether there would be 28 pieces, which would come to \$196.00 to give to the quartermaster." He told me what to write in the letter, and I wrote it, and went out and back to the storeroom and to work again. I asked him what name to sign to the letter, and he said, "Never mind the name." It is that letter you show me with black lines ruled on it, which is marked Exhibit 9. This was on Friday. That was all that I had to do with the stuff, nothing more only that letter. I remember before Chuck Fat asked me to write many times letters to friends. He cannot write Chinese. I cannot remember how many times he asked me to write letters. I never brought any stuff or opium into the quartermaster's room. I remember the day Yick Fat and I were arrested; and I remember seeing Chuck Fat standing near where we were on the ship's sailing day, in the morning about 9 or 10 o'clock; and I heard the quartermaster Matthai call "Fat," he

(Testimony of Li Cheung.)

called his boy, Chuck Fat, and I heard him say, "Fat, when you go back to China you leave the ship, you need not come back; there will be trouble about this stuff; you keep still." I heard him say that. I never knew Jung Quey before I was arrested, and never wrote any letter to give to him. And I never sent any opium of any kind to Mon Hing or [72] Yt Yee, and never gave any to Matthai to give to anybody. I never agreed with anyone to try to land any opium from the steamer "China" at San Francisco, and never had anything to do with that kind of thing. I was the storekeeper's boy on the steamer.

Cross-examination.

Twice on another trip I wrote letters for Chuck Fat. I did not know what Chuck Fat brought into the quartermaster's room, but when I wrote the letter for him I suspected it was opium, from the fact that there was so much money to come for it.

Q. Didn't you ever know Sam Kee's manager, the man who manages his store, and on Saturday afternoon didn't he come down to the ship and see you and talk to you about this opium, on Saturday, January 31st? (Defendants object to the question on the ground that it is irrelevant, incompetent and immaterial, and not cross-examination, and assumes it to be a fact that Sam Kee had a manager. Objection overruled.) A. I did not know that man; I did not know Sam Kee's man.

Redirect Examination.

I was a member of the crew, and even after my

arrest had to give a bond to the Immigration authorities to be allowed to stay here and defend this case.

[Testimony of Wong Chung, for Defendants.]

WONG CHUNG, called as a witness on behalf of defendants, and sworn and testified as follows:

On January 30th, 1914, I was working for Wing Hing Lung at 749 Clay Street, San Francisco, and was in that store between 12 and 1 o'clock on that day. I know Jung Tung Quey, the defendant sitting over there, and I also know a man named Jung Quey. I saw the quartermaster Matthai come into the [73] store about that time and Jung Quey was there, but the defendant Jung Tung Quey was not there when he came in. There were several people there. When Matthai came in I spoke to him, and I did not know which man he wanted. He sat down and after awhile the defendant Jung Tung Quey came in, and the quartermaster spoke to him, and the defendant Jung Tung Quey answered "This is not my affair; none of my business." The quartermaster gave him a piece of paper and I saw him look at the paper, and he said, "It did not belong to him," and he did not accept the paper, and then the defendant Jung Tung Quey went out of the store. The quartermaster and the defendant Jung Tung Quey did not at any time go into a room back of the front of the store. The quartermaster stayed about 10 or 15 minutes, after the defendant went out of the store, and the quartermaster asked me to go and look for Jung Tung Quey, and I said I could not find him, and I gave him a card for him to telephone for him. I gave him two cards with

(Testimony of Wong Chung.)

telephone numbers on. The pieces of paper with the telephone numbers on that I gave him was about the size of the paper "Exhibit No. 4," which you now show me. I took the piece of paper from the top of a box on the shelf where they were kept.

Cross-examination.

Wing Hing Lung Company is a big company, and several members in it. Li Tim is the name of the bookkeeper. The name of the manager is Lee Gow; he has gone back to China now; and Li Tim was acting as manager when the quartermaster came in. I don't know whether the defendant Jung Tung Quey has an interest in the company or not. He is back and forth there. He is in the employment business, and leaves the cards there [74] so that if any Japanese, or other persons want to find him, they can do so. I don't know who wrote out the numbers of the telephone on the slips of paper. I saw the defendant constantly putting cards there where I got these cards. I was just working around the store temporarily at the time.

[**Testimony of Joseph Head, for Plaintiff (Recalled in Rebuttal).**]

JOSEPH HEAD, was recalled in rebuttal for the plaintiff and testified:

I know Sam Kee well, and have talked with him over ten or fifteen times.

Q. Did you ever carry on any extended conversation with him? (Objected to by defendants as incompetent, irrelevant and immaterial, and not proper

(Testimony of Joseph Head.)

rebuttal: Objection was overruled, and defendants duly excepted.) A. Yes he talks fairly well, and an ordinary person would not have any difficulty in understanding him. I know a man said to be the book-keeper of the Wing Hing Lung Co.

[Testimony of Henry Matthai, for Plaintiff (Recalled in Rebuttal).]

HENRY MATTHAI, recalled in rebuttal for plaintiff and testified:

I never had any conversation with Wong Chung, and do not remember seeing him at Wing Hing Lung's store. No one in that store handed me any telephone numbers on any piece of paper, and after the defendant Jung Quey left the store I did not ask anybody there where he had gone. A young man in the store came to me and told me to go to some corner; he talked to me when I came in, but I never heard his name.

I never heard Chuck Fat make any request to Li Cheung to write letters; and I was never present at any conversation with Li Cheung and Chuck Fat about opium or skins. At the time the last letter was written Chuck Fat was not in the [75] room. I never had any talk with Chuck Fat about opium at any time.

A JUROR.—Q. When did you say you first got acquainted with your partner Kirchisen? A. I know him in Germany.

Mr. COOK. Did you know him well there? A. Yes, sir, he says he don't recognize me any more. He was an Ensign in the German Navy I was a Cadet.

(Testimony of Henry Matthai.)

Q. I asked you how long you had known him and didn't you say he had been here about a year, and you were friends in the old Country? A. I did not say I knew him well. I said I knew him.

**[Testimony of Li Cheung, for Defendants
(Recalled).]**

LI CHEUNG, recalled by plaintiff for further examination and testified:

Mr. PRESTON.—Q. Did a Chinaman by the name of Li Tim come down to the Pacific Mail Docks and talk to you at any time while the steamer "China" was in in January. A. I don't know the name. I can't read English. Many Chinaman; my friends come down to see me all the time.

**[Testimony of John Toland, for Plaintiff (in
Rebuttal).]**

JOHN TOLAND, called by plaintiff in rebuttal, and sworn and testified:

I have known the defendant Sam Kee five or six years, and have talked with him a good deal.

Q. What kind of subjects have you discussed with him? (Defendants objected to as incompetent, irrelevant and immaterial, objection overruled.) A. Yes, sir I have discussed subjects with him.

Q. What kind of English can he talk if any? (Objected to by defendants as not rebuttal. Objection overruled and defendants duly excepted.) A. He can: I would say good English; I have had no occasion to have any trouble understanding him.

[76]

The foregoing was in substance and effect all of the testimony and evidence upon the trial, and of all

(Testimony of John Toland.)

the proceedings had thereon.

Upon the conclusion of the aforesaid testimony and evidence the United States Attorney made an opening argument on behalf of the people; and Wm. Hoff Cook Esq., made an argument on behalf of the defendants; and the United States Attorney made the closing argument on behalf of the plaintiff; and thereupon the Court instructed and charged the Jury in the words and figures following:

Charge to the Jury.

The COURT: (Orally.) Gentlemen, the defendants are charged, in the second count of the indictment, as that is the only one on which they are now on trial, with violating section 37 of the Criminal Code of the United States, which provides:

“If two or more persons conspire to commit any offense against the United States, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be punished as therein provided.”

The offense which the defendants are charged with having conspired to commit is that of receiving and concealing certain opium after importation, such opium being opium theretofore imported into the United States contrary to law, as the defendants well knew.

Such conspiracy is alleged to have been formed by Jung Quey, alias Sam Kee, Li Cheung, Yik Fat, Mon Hing and Jt Yee, and others to the Grand Jury unknown. The defendants now on trial are Jung Quey, Li Cheung, Mon Hing and Jt Yee; Yik Fat having

been acquitted by a former jury, you cannot now convict any of these defendants because of any conspiracy with Yik Fat alone, [77] even if you should find such conspiracy to have existed. Nor can you find any of the four defendants on trial guilty because of any conspiracy with any other person or persons, save those on trial here, but in order to convict any of the **four defendants** on trial, you must find that he conspired with some one or more of the other defendants who are now on trial.

The fact that it is charged that Li Cheung and Yik Fat committed certain overt acts is not affected by the acquittal of Yik Fat, if you find that these were committed by Li Cheung and Yik Fat or by Li Cheung alone.

You will observe that the section defining conspiracy requires, before the offense is complete, first, the conspiracy to commit an offense against the United States and second, that one or more of the parties to such conspiracy shall do some act or effect the object thereof. This act is known in law as an overt act.

There are, as I remember, four overt acts charged as having been committed in the offense of this conspiracy, the first of these overt acts being Li Cheung and Yik Fat, on or about the 30th day of January, brought into the port of San Francisco from some foreign port or place unknown, seven skins of opium. The second is that said Li Cheung and Yik Fat prepared seven skins or bladders containing 14 pounds of opium for the purpose of causing the same to be delivered to Jung Quey. The third is that the said

Li Cheung and Yik Fat delivered seven skins or bladders containing 14 pounds of opium for one Mon Hing, for the purpose of having the said opium delivered to the said Jung Quey, alias Sam Kee; and the fourth is that Mon Hing and Jt Yee, on the 31st of January, received the seven skins or bladders containing the 14 pounds of opium, and so forth. [78]

It is not necessary that all the overt acts charged be proved, but it is necessary that at least one of them be proved, and that it was done to effect the object of the conspiracy. To this indictment the defendants have entered a plea of not guilty, thus putting in issue all the material facts embraced therein.

First, you will observe that the indictment herein gives rise to no presumption against the defendants whatever. Such indictment is not evidence or proof in any sense, and must not be considered or treated as such, or acted upon by you as evidence or proof against the defendants.

The defendants and each of them are presumed to be innocent and this presumption has the weight and the effect of evidence in their behalf, and it continues to operate in their favor until it is overcome by competent evidence; and, if the evidence introduced in this case does not overcome this presumption of innocence to your satisfaction, to a moral certainty and beyond all reasonable doubt, you must find the defendants not guilty.

It is not necessary for the defendants to prove their innocence, but the burden rests upon the prosecution to establish every element of the crime with which the defendants are charged, and every ele-

ment of the crime must be established to a moral certainty and beyond all reasonable doubt. If the prosecution fails to establish to a moral certainty and beyond all reasonable doubt any one element of the crime with which the defendants are charged, and which it is necessary to establish, in order to convict, or, if there remains in the minds of the jurors a reasonable doubt as to whether or not the prosecution has established any element constituting the crime to a moral certainty and beyond all reasonable doubt, then you must find the defendants not guilty.

[79]

The defendants can only be convicted, if at all, on the precise crime set out in the indictment, and although you may be satisfied from the evidence that the defendants have been guilty of other crimes or offenses, nevertheless, they cannot be convicted of the crime set out in the indictment unless the evidence proves to you their guilt of that particular crime. Therefore, unless you find, beyond a reasonable doubt, that a conspiracy existed among one or more of the defendants as alleged in the indictment, you must find all of the defendants not guilty. Mere knowledge of the existence of such conspiracy without active participation therein is not sufficient to warrant the conviction of any defendant. Participation without knowledge, or knowledge without participation is not sufficient to warrant a conviction.

You are the exclusive judges of the weight of the evidence here, and the credibility of the witnesses. Under your oaths as jurors you are to take into consideration only such evidence as has been admitted by

the Court, and you should in obedience to your oaths, disregard and discard from your minds every impression or idea suggested by questions asked by counsel which were objected to, and to which objections were sustained. The defendants are to be tried only on the evidence which is before you, and not on suspicions that may have been excited by questions of counsel, answers to which were not permitted. And I caution you to distinguish carefully between the testimony offered here by the witnesses on the stand and statements made by counsel, or maintained in their argument, as to what facts have been proved; and if there is a variance between the two, you must, when arriving at your verdict, consider only the facts testified to by the witnesses and the evidence offered and admitted, [80] together with the instructions of the Court.

The fact that any defendant has not testified in his own behalf should not be considered or construed in any way against him, and you are not at liberty to indulge in any presumption of guilt, or any unfavorable presumption or inference, because he has not testified in his own behalf.

If the evidence leaves it uncertain which, of two or more inferences from the fact proven, is the true inference, you must adduce that inference which is most favorable to the defendants.

Mere probabilities or suspicious are not sufficient to warrant a conviction, nor it is sufficient that the greater weight or preponderance of the evidence supports the allegations of the indictment, nor is it sufficient that upon the doctrine of chances it is more

probable that the defendants are guilty than innocent.

The defendants are presumed to be men of good character and in this case, have introduced affirmative evidence as to such good character. Good character may in certain cases of itself create a doubt where otherwise none would exist, and this evidence must not be set aside by you to be considered only after you have reached a verdict independently thereof but must be considered by you in connection with all the evidence in the case, and if, after such consideration of all the evidence in the case, including that of good character, you entertain a reasonable doubt of the defendants' guilt, you must return a verdict of not guilty. On the other hand if after a consideration of all the evidence including that of good character you are satisfied of the guilt of the defendant or any of them, you should so find notwithstanding such good character.

I have stated to you that the charge here is that of conspiracy, '[81]' and a conspiracy may be defined as a confederacy formed by two or more persons to effect an unlawful purpose, said persons acting under a common purpose to accomplish an unlawful end desired.

While a conspiracy cannot exist without a guilty intent being there present in the minds of the conspirators, yet this does not mean that the parties must know that they are violating the statutes, or any statute, of the United States. The only question for you to pass upon in this connection is whether the defendants conspired to do the things which were in violation of law,—not whether they had any knowl-

edge that they were violating the law.

Upon the question of intent on the part of the defendants, you are instructed that the law presumes that every person intends the natural and ordinary consequences of his act. Wrongful acts, knowingly or intentionally committed, cannot be justified on the ground of innocent intent. Ordinarily the intent with which a man does a criminal act is not proclaimed by him, and ordinarily there is no direct evidence from which the jury may be satisfied, from declarations of the person himself, as to what he intended when he did a certain act. And this question of intent, like all other questions of fact, is solely for the jury to determine from the evidence in the case. Generally, upon this subject of conspiracy, I instruct you that it is competent for you to consider all the facts developed in the case for the purpose of answering the question as to whether or not a conspiracy was in fact entered into between the parties named in the indictment, or any of them.

Direct proof is not indispensable and a conspiracy may be shown by circumstances, but where the prosecution in a criminal [82] case relies upon circumstantial evidence—that is, upon proof of facts and circumstances which are to be used as a means of arriving at the principal facts in question—it is a rule that these facts or circumstances must be fully proven in order to lay the basis for the conclusion which is sought to be established. Each circumstance essential to the conclusion must be proved to the same extent as if the whole issue rested upon the proof of such essential circumstance. The burden

of proof throughout is upon the prosecution to prove the guilt of the defendants. In a case depending upon circumstantial evidence alone the rule is, first, that the hypothesis of delinquency or guilt of the offense charged in the indictment must flow naturally from the facts proven and be consistent with them all, and, second, the facts proven must be such as to exclude every reasonable hypothesis or view but that of the guilt of the defendant of the offense imputed to him, or, in other words, the facts proven must all be consistent with the theory of guilt and inconsistent with the theory of innocence.

No defendant can be found by the jury to be a party to a conspiracy without legal and competent proof beyond a reasonable doubt, that he positively came to a mutual understanding with one or more persons to commit an offense, prior to the doing of an overt act in pursuance thereof, and the mere proof that any defendant received or concealed opium prepared for smoking purposes although proof of the commission of a public offense, is not, and would not, of itself, be proof of a conspiracy to receive or conceal such opium; and in this case of a conspiracy, the proof of possession of such opium, would not shift the burden of proof on any defendant to explain such possession. [83]

But while it is necessary, in order to establish a conspiracy, to prove a combination of two or more persons by concerted action to accomplish the criminal or unlawful purpose or purposes alleged in the indictment, yet it is not necessary to prove that the parties ever came together and entered into any

formal agreement or arrangement between themselves to effect such purpose or purposes; the combination or common design or object may be regarded as proved if the jury believe from the evidence beyond a reasonable doubt that the defendants were actually pursuing in concert the unlawful object stated in the indictment, whether acting separately or together by common or different means; providing all were leading to the same unlawful result.

It is not necessary, in order to establish the fact of conspiracy, to prove by direct evidence that the parties met and actually agreed to jointly undertake such criminal action. Evidence is indirect as well as direct, indirect consisting of inference and presumptions; and it is the law that upon the trial of a case evidence may be given of any facts from which the facts in issue are presumed or are logically inferable; and the jury, by *a* exercise of their judgment and reason, based upon a consideration of the usual propensities or passions of men, the course of business or the course of nature, may make such deductions or draw such inferences from the facts proven, if such facts warrant it, as will establish the ultimate fact or facts in issue.

A conspiracy can seldom be proved by direct testimony. Persons combining for the execution of a crime do not ordinarily expose themselves to public observation, and the fact of combination can, therefore, as a general rule, be established only by proof of the acts of the several parties in such combination, [84] the relation of these acts to each other, and their tendency, by united effect, to produce the

common result. In other words, where the jury finds that the acts of the several parties charged with conspiracy are the co-ordinates of each other, and are for the consummation of the criminal purpose charged in the indictment as the object of the conspiracy, showing a common design, they are at liberty to find that the various parties performing these several and respective acts were engaged in a conspiracy to commit the offense, although there may be no direct evidence whatever before the jury to show that such parties ever entered into any agreement to commit such offense.

A conspiracy may be proved by showing the acts and conduct of the conspirators. It is seldom possible to establish a specific understanding by direct agreement between parties to effect or accomplish an unlawful purpose. Usually, therefore, the evidence must necessarily be circumstantial in character and it will be sufficient if it leads to the conviction that such conspiracy in fact existed. Thus, if it be shown that the conspirators were apparently working to the same purpose—that is, one performing one part, and another, another part, each tending to the attainment of the same object so that in the end there was apparent concert of action, whether they were acting in the immediate presence of each other or not, it would afford proof of a conspiracy to effect that object.

It is as competent to prove an alleged conspiracy by circumstantial as by direct evidence. In prosecutions for criminal conspiracy, the proof of the combination charged must almost always be extracted from the circumstances connected with the transac-

tions which form the subject of the accusation. The [85] acts of the parties in the particular case, the nature of those acts, and the character of the transactions, or series of transactions, with the accompanying circumstances, as the evidence may disclose them, should be investigated and considered as the source from which evidence may be derived of the existence or non-existence of an agreement, which may be express or implied, to do an unlawful act. Guilty connection with the conspiracy may be established by showing associations by the persons accused in and for the purpose of the prosecution of the illegal object. Each party must be actuated by an intent to promote the common design, but each may perform separate acts or hold distinct relations in forwarding that design. There must be an intentional participation in the transaction or transactions with a view to the furtherance of the common design and purpose. If persons work together to achieve an unlawful scheme, having its promotion in view, and actuated by a common purpose of accomplishing the unlawful end, they are conspirators.

When a common purpose to prosecute an unlawful scheme has been shown beyond a reasonable doubt, the overt act or acts or declaration or declarations of any one or all concerned, in furtherance of and while in the execution of such purpose, are admissible as illustrating the design and establishing the character or the original confederation, and after the existence of a conspiracy has been shown, the act or declaration of any one of the conspirators during the continuance thereof and to effect its purposes, is in law

the act or declaration of all.

And, if you believe from the evidence, beyond a reasonable doubt, that any particular one of the defendants was actually pursuing in concert with any other defendant here on trial the unlawful object stated in the indictment, even though he were [86] not a party to the conspiracy at the time when the original conspiracy was formed, if you find that such conspiracy was formed, but that he was aware of the conspiracy when he committed any overt act or acts in pursuance of that unlawful object, and in concert with any of the original parties to the conspiracy, the charge of conspiracy, is established against that defendant, and you must find him guilty.

Where a defendant takes the witness stand, his evidence is to be judged by the same rules which are applied to determining the credibility of any other witness. That is, he is not to be discredited merely upon the ground that he is the defendant. You are to accord him the same fair and impartial consideration of his evidence, when viewed in the light of all the other facts in the case, as you would the testimony of a witness standing in any other relation to the case; but in passing upon the evidence of a defendant you are entitled precisely as with any other witness, to consider the interest he has in the result of the trial, and determine for yourselves how far that interest may have tended to color his evidence or cause him to deviate from the truth.

Witnesses have been called in the course of the trial who have testified about their own participation in the offense. Criticism has been made of their testimony, and the Court instructs you that if these wit-

nesses were acting in conjunction with the officers of the Government and under their direction, and for the sole purpose of securing evidence against the defendants they are not regarded in law as actual accomplices, and their testimony is not subject to the rules applying to the testimony of accomplices. If they were not so acting in conjunction with the officers but were actual guilty participants in the conspiracy charged, if you find such conspiracy to have existed, then I instruct you that it is the settled rule in this country [87] that even accomplices in the commission of crime are competent witnesses, and that the Government has the right to use them as witnesses. It is the duty of the Court to admit their testimony, and that of the jury to consider it. The testimony of accomplices is, however, always to be received with caution, and weighed and scrutinized with great care. And the jury should not rely upon unsupported, unless it produces in their minds the most positive conviction of the truth. It is just and proper in such cases for the jury to seek for corroborating facts and circumstances in other material respects; but this is not absolutely essential, provided the testimony of such witnesses produces in the minds of the jury full and complete conviction of its truth. But where corroborating evidence is required, or is sought by the jury, it is the law that the testimony of one or more accomplices is not sufficient to corroborate the testimony of other accomplices.

The word "accomplices" includes all persons who have been guiltily concerned in the commission of an offense, and the grade and degree of the guilt of such

person is not important, provided there be guilt at all.

While before you can find the defendants guilty of the charge alleged in the indictment, the evidence must satisfy you as to their guilt beyond a reasonable doubt, yet you will not understand from this that the Government is called upon to make a case free from any possible doubt, that is, to prove the defendant's guilt, or the guilt of some of them, to an unassailable demonstration. Such is not the law, for such proof is rarely obtainable in dealing with human transactions; in other words, the doubt which will justify your hesitation must be based in reason and arise upon the evidence, and not consist of mere fanciful hesitation [88] growing out of your sympathies or based upon something other than a fair and impartial consideration of the evidence in the case.

The term reasonable doubt means just what its language imports. To be a reasonable doubt it must be based upon reason. There is hardly anything relating to human affairs that is not open to some possible or fanciful or imaginary doubt. Mere possible or fanciful or imaginary doubts are not reasonable doubt.

A reasonable doubt is that state of the case which, after the entire comparison and examination of all the facts and circumstances, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the truth of the charge.

Now, the act concerning the importation of opium as far as applies in this case is as follows:

“That after the first day of April, nineteen hundred and nine, it shall be unlawful to import into the United States opium in any form or any preparation or derivative thereof; provided, that opium and preparations and derivatives thereof, other than smoking opium or opium prepared for smoking, may be imported for medical purposes only, under regulations which the Secretary of the Treasury is hereby authorized to prescribe, and when so imported shall be subject to the duties which are now or may hereafter be imposed by law.”

“Sec. 2. That if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any opium or any preparation or derivative thereof contrary to law, or” (and this is the portion *which* which you are here most concerned), “shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or [89] sale of such opium or preparation or derivative thereof after importation, knowing the same to have been imported contrary to law, such opium or preparation or derivative thereof shall be forfeited and shall be destroyed, and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or by imprisonment for any time not exceeding two years, or both.”

“Whenever, on trial for a violation of this section, the defendant is shown to have, or to have had, possession of such opium or preparation or derivative thereof, such possession shall be deemed sufficient evidence to authorize conviction unless the defendant shall explain the possession to the satisfaction of the jury.”

Section 3: "That on and after July first, nineteen hundred and thirteen, all smoking opium or opium prepared for smoking found within the United States shall be presumed to have been imported after the first day of April, nineteen hundred and nine, and the burden of proof shall be on the claimant or the accused to rebut such presumption."

Now you may, of course, if the evidence warrants it, render a verdict of guilty as to any one or more of the defendants. Because of there being four defendants on trial, you have to find at least two conspired before you can render a verdict of guilty against any of them; or you may render a single verdict as to all of the defendants, or a separate verdict as to each; you may, if the evidence warrants, render a verdict of guilty as to two and not guilty as to the other two.

It requires the concurrence of all of you to agree upon a verdict, and such verdict as you may agree upon, you will have signed by your foreman and return into court. [90]

Upon the conclusion of the evidence and testimony, and prior to the arguments of respective counsel to the jury, certain instructions were requested on behalf of the defendants, in the words and figures follows:

Instructions Requested on Behalf of Defendants.

1.

The second count of the indictment charges that on the 29th day of January, 1914, the five defendants, and other persons whose names are unknown to the Grand Jury, wilfully, corruptly, knowingly and un-

lawfully and feloniously conspired together to knowingly, wilfully and fraudulently receive and conceal seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes, which they all knew had been previously imported into the United States contrary to law, and under this count it is absolutely essential that the conspiracy, as alleged in such count, must be proved, and you must acquit the defendants if the Government fails to establish such conspiracy beyond a reasonable doubt.

2.

I instruct you that you must find beyond all reasonable doubt that a conspiracy, exactly as alleged in the indictment, had been entered into by the defendants and other persons, and before the commission of any alleged overt act in pursuance thereof, before you can consider any evidence as to any overt acts alleged in the indictment, as being done in furtherance of such conspiracy, and to effect and accomplish its object, and in so considering any evidence as to any alleged overt act, the acts of each defendant are only to be considered the individual act of such defendant, and no defendant can be held responsible for any act of any other defendant, or of any other person, unless you can find, by legal and competent evidence, and beyond a reasonable [91] doubt, that such defendant was in fact a party to such an unlawful conspiracy, as is alleged in the indictment, and no allegation of the indictment or proof thereof, of any overt act, can be used to aid the allegations of the indictment as to the alleged conspiracy itself.

3.

I instruct you that this is not a case where these

defendants are charged with the commission of the offense of receiving and concealing smoking opium, so that each defendant who might aid and abet in the commission of such offense would be a principal in the commission of such offense, and thus be bound by the acts of any other person concerned in the commission of such offense, but they are charged solely with a conspiracy to commit an offense, and no person is responsible for the act of any other person unless he himself has first been proven, beyond a reasonable doubt, to be a party to such conspiracy.

4.

You will bear in mind in this case, and under this indictment you must first find by legal and competent evidence, which satisfies the mind of each one of you that two or more of the defendants, unlawfully conspired to commit the offense as alleged in the indictment, and not to commit some other offense, as facilitating the transportation of opium after importation, and that thereafter, and in pursuance of such conspiracy, and to effect and accomplish its purpose and object, that one of such conspiring defendants did some overt act, as alleged in the indictment, and I instruct you that you cannot find any of the defendants guilty unless the evidence establishes the conspiracy itself to have been made by the defendants within the Northern District of California; and I instruct you that San Francisco is in such Northern District. [92]

5.

No person can be found by a jury to be a party to a conspiracy unless there is proof that he positively came to a mutual understanding with another to ac-

comply with a common and unlawful design.*

6.

I instruct you that no acts or declarations of an alleged conspirator, subsequent to the completion of such joint criminal enterprise, is admissible, or to be considered by the jury against any other alleged co-conspirator.

7.

I instruct you that a conspiracy to receive opium is completed when it has been delivered to a person after importation.

8.

I instruct you that no defendant can be found by the jury to be a party to a conspiracy without legal and competent proof beyond a reasonable doubt, that he positively came to a mutual understanding with one or more persons to commit an offense, prior to the doing of any overt act in pursuance thereof, and the mere proof that any defendant received or concealed opium prepared for smoking purposes although proof of the commission of a public offense, is not, and would not, of itself, be proof of a conspiracy to receive or conceal such opium; and in this case a conspiracy, the proof of possession of such opium, would not shift the burden of proof on any defendant to explain such possession.

9.

A conviction cannot be had on the testimony of an accomplice unless he is corroborated by other evidence which in itself, and without the aid of the testimony of the accomplice tends to connect the defendant with the commission of the offense, as set [93] forth in the indictment; and the corrobora-

tion is not sufficient if it merely shows the commission of the offense, or the circumstances thereof.

10.

The word "accomplice" includes all persons who have been concerned in the commission of an offense, and the grade or degree of the guilt of such persons is not important.

11.

An accomplice may also be defined to be a person who knowingly or voluntarily unites in the commission of a crime, or associates in the commission of a crime, or is a partner in the guilt, or of any part of the proceeds of such crime; and the term "accomplice" includes all participants in the commission of crime.

12.

Any person who aids and abets another in the commission of a crime or advises and encourages its commission is an accomplice of such other person; and I instruct you that if you find that any witness was to or did receive any money by reason of assisting in any alleged overt act, that such person is an accomplice, and you cannot convict upon his uncorroborated testimony, and the testimony of any accomplice is not legal corroboration of any other accomplice.

13.

I instruct you that the testimony of an accomplice ought to be viewed with distrust.

14.

A person who unlawfully gives opium prepared for smoking purposes to another person is an accomplice of the person who unlawfully receives such

opium, and any person who aids and abets, or advises and encourages such person unlawfully to give such opium to another person is an accomplice of the person who unlawfully receives [94] such opium.

15.

I instruct you that in this case it is incumbent upon the prosecution to prove every material allegation in the indictment, and the burden of proof does not shift to any defendant to establish his innocence, and when independent facts and circumstances are relied upon to establish the guilt of a defendant, the rule is that the fact or circumstance shall not only be consistent with the guilt of the accused, but inconsistent with any other rational conclusion or otherwise the evidence will be insufficient to convict; and every material dependent fact or circumstance necessary to the complete chain or series of dependent facts or circumstances tending to establish a presumption of guilt, shall be established to the same degree of certainty as the main fact.

16.

I instruct you that if you find from the evidence that the quartermaster Matthai took any opium prepared for smoking purposes from the steamship "China" on January 30th, 1914, while she was in the port of San Francisco, and that he did so with the permission of the Government, through its duly authorized officers, then I instruct you that such opium was not being unlawfully transported after its importation, and the receipt of such opium by any person thereafter, by any person, from said quartermaster, was not an unlawful act, and therefore cannot be considered by you as an unlawful act done in

pursuance of the conspiracy, as alleged in the indictment, and such testimony cannot be considered by you as establishing in any degree the guilt of any of the defendants of the conspiracy as alleged in the indictment. [95]

17.

I instruct you that there can be no conspiracy without the doing of some overt act to effect the object and purpose of such conspiracy.

18.

You are instructed that no matter how strong may be the probability in favor of the hypothesis of guilt, if it is nothing more than a probability, the presumption fails, and the defendant must be acquitted; a suspicion, no matter how strong it may be, cannot justify you in convicting; the law does not permit a conviction of a crime on suspicion, be it ever so strong.

19.

I instruct you that it is not sufficient that the facts proved coincide with, account for, and therefore render probable and hypothesis of guilt asserted by the prosecution; but they must exclude, to a moral certainty, and beyond all reasonable doubt, every other hypothesis but the single one of guilt, or the jury must acquit.

20.

In determining the weight or credit to be given to testimony of any witness you have the right to consider whether such witness is testifying under promise that he will not be prosecuted or punished for admitting crimes, and whether or not such witness is testifying under a promise of immunity, and

whether or not such witness is testifying under a hope that immunity will be granted, or receiving compensation therefor.

21.

A conspiracy has these elements; First, An object to be accomplished, which must be the commission of a public offense against the United States, and not against the laws of any [96] particular State; Second, a plan or scheme embodying means to accomplish the object; Third, an agreement or understanding between two or more persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the scheme or by effectual means; and Fourth, an overt act by one or more of the conspirators in furtherance of and to effect the object of the conspiracy.

22.

You are instructed that the plea of "not guilty" of the defendants is a denial by them of each and every fact alleged in the indictment, and that it is not necessary for any defendant in order to obtain an acquittal from your hands to either take the witness stand himself, nor produce any evidence to support his denial; each defendant may rest upon that denial, and the presumption of his innocence; and if the evidence produced by the prosecution does not satisfy you of a defendant's guilt, to a moral certainty and beyond a reasonable doubt, it is your duty upon such defendant's plea of not guilty, and the presumption of his innocence, to acquit him.

23.

You are instructed that it is not incumbent upon any defendant to establish his innocence or to endeavor to do so; neither is it the duty of any defendant to explain suspicious circumstances.

24.

Each defendant has a right to remain mute and demand that the Government make the case against him to a moral certainty and beyond a reasonable doubt; and the jury is not at liberty to comment upon the fact, or to consider the fact that a defendant has not testified in the case. Neither are the jurors permitted [97] to draw any inference or presumption or conclusion adverse to a defendant because he has remained mute or has not testified.

25.

Even though you should conclude from the evidence that a defendant is guilty of any number of crimes, still if you are not convinced of such defendant's guilt to a moral certainty and beyond all reasonable doubt from the evidence presented, of the precise offense charged in the indictment, it is your duty to find such defendant not guilty.

26.

You should consider the evidence in this case, and apply it as though each of the defendants were being separately tried, and you are not to indulge in any inference or presumption against any defendant because he is being jointly tried with the other defendants, nor are you to infer or presume that because the Court has directed the defendants to be tried jointly and not to have separate trials that they

are for that reason jointly involved in any matter alleged in this indictment.

WM. HOFF COOK,
Attorney for Defendants.

[Order Settling etc. Bill of Exceptions.]

I hereby certify that the foregoing Bill of Exceptions in substance and effect contains a full statement and transcript of all the proceedings had upon the trial of the above-entitled action, and also that the same, in substance and effect contains a full and *completement* statement and transcript of all the testimony and evidence had upon said trial; and I hereby certify that the same is correct; and said Bill of Exceptions is hereby settled, approved and allowed.

M. T. DOOLING,
District Judge. [98]

The foregoing Bill of Exceptions is satisfactory to me.

JNO. W. PRESTON,
U. S. Atty.

[Receipt for Copy of Bill of Exceptions.]

RECEIPT of a copy of the within Bill of Exceptions of Proceedings had upon the trial of the cause is hereby admitted this 6th day of August, 1914.

JOHN W. PRESTON,
United States Attorney (W. E. H.)

[Endorsed]: Filed Nov. 6, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [99]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

vs.

JUNG QUEY et al.,

[Verdict on Second Count of Indictment.]

We, the Jury, find JUNG QUEY, LI CHEUNG, MON HING and JT YEE, the defendants at the bar, GUILTY on the Second Count of the Indictment herein.

JOHN G. BARKER,

Foreman.

[Endorsed]: Filed June 12, 1914, at 6 o'clock and 55 minutes P. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [100]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

vs.

JUNG QUEY, LI CHEUNG, MON HING, and JT YEE,

[Verdict on First Count of Indictment.]

We, the Jury, find for the defendants at the bar,

upon their plea of former acquittal of the offense charged in the first count of the indictment.

JOHN G. BARKER,
Foreman.

[Endorsed]: Filed June 12, 1914, at 6 o'clock and 55 minutes P. M. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [101]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

vs.

JUNG QUEY, LI CHEUNG, MON HING and JT
YEE,

Verdict.

We, the Jury, find for each of the defendants at the bar, upon his plea of former acquittal of conspiracy with Yik Fat alone.

JOHN G. BARKER,
Foreman.

[Endorsed]: Filed June 12, 1914, at 6 o'clock and 55 minutes P. M. W. B. Maling, Clerk. C. W. Calbreath, Deputy Clerk. [102]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion for a New Trial of Defendant Jung Quey.

Now comes the defendant herein JUNG QUEY, and moves the Court for an order setting aside the verdict herein, and granting the defendant a new trial, upon the grounds:

1. That the Court misdirected the jury in matters of law:

2. That the Court erred in the decision of questions of law arising during the course of the trial, and excepted to by defendant:

3. That the verdict is contrary to law:

4. That the verdict is contrary to the evidence:

5. That the evidence is insufficient to sustain the verdict:

6. That the Court erred in admitting in evidence, over the objections of defendant, Government's Exhibits:

7. That the Court erred in refusing to give all of the instructions to the jury, in the form as requested by defendant:

8. That the Court erred in modifying certain instructions requested by defendant.

WM. HOFF COOK,
Attorney for Defendants.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [103]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion for a New Trial of Defendant Li Cheung.

Now comes the defendant herein LI CHEUNG, and moves the Court for an order setting aside the verdict herein, and granting the defendant a new trial, upon the grounds:

1. That the Court misdirected the jury in matters of law:

2. That the Court erred in the decision of questions of law arising during the course of the trial, and excepted to by defendant:

3. That the verdict is contrary to law:

4. That the verdict is contrary to the evidence:

5. That the evidence is insufficient to sustain the verdict:

6. That the Court erred in admitting in evi-

dence, over the objections of defendant, Government's Exhibit:

7. That the Court erred in refusing to give all of the instructions to the jury, in the form as requested by defendant:

8. That the Court erred in modifying certain instructions requested by defendant.

WM. HOFF COOK,
Attorney for Defendants.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [104]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion for a New Trial of Defendant Mon Hing.

Now comes the defendant herein MON HING, and moves the Court for an order setting aside the verdict herein and granting the defendant a new trial, upon the grounds:

1. That the Court misdirected the jury in matters of law:

2. That the Court erred in the decision of questions of law arising during the course of the trial, and excepted to by defendant:

3. That the verdict is contrary to law:
4. That the verdict is contrary to the evidence:
5. That the evidence is insufficient to sustain the verdict:

6. That the Court erred in admitting in evidence, over the objections of defendant, Government's Exhibits:

7. That the Court erred in refusing to give all of the instructions to the jury, in the form as requested by defendant:

8. That the Court erred in modifying certain instructions requested by defendant.

WM. HOFF COOK,
Attorney for Defendants.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [105]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion for a New Trial of Defendant Yt Yee.

Now comes the defendant herein YT YEE, and moves the Court for an order setting aside the verdict herein, and granting the defendant a new trial, upon the grounds:

1. That the Court misdirected the jury in matters of law:

2. That the Court erred in the decision of questions of law arising during the course of the trial, and excepted to by defendant:

3. That the verdict is contrary to law:

4. That the verdict is contrary to the evidence:

5. That the evidence is insufficient to sustain the verdict:

6. That the Court erred in admitting in evidence, over the objections of defendant, Government's Exhibits:

7. That the Court erred in refusing to give all of the instructions to the jury, in the form as requested by defendant:

8. That the Court erred in modifying certain instructions requested by defendant.

WM. HOFF COOK,
Attorney for Defendants.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [106]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion in Arrest of Judgment of Defendant Jung Quey.

Now comes the defendant herein JUNG QUEY, and moves the Court that *in* arrest its judgment upon the verdict of guilt herein, and that no judgment be rendered by the Court upon the verdict of "guilty as charged in the indictment," heretofore found against this defendant and said motion is made upon the grounds:

That the second count of the indictment herein does not state facts sufficient to constitute a public offense against this defendant.

2. That the whole record and evidence in this case fails to establish any violation by the defendant of a conspiracy to violate the Act of Congress of February 9th 1909.

Wm. HOFF COOK,
Attorney for Defendant.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [107]

*In the District Court of the United States, in and for
the Northern District of California, First Division.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

**Motion in Arrest of Judgment of Defendant Li
Cheung.**

Now comes the defendant herein LI CHEUNG, and moves the Court that *in* arrest its judgment upon the verdict of guilt herein, and that no judgment be rendered by the Court upon the verdict of "guilty as charged in the indictment," heretofore found against this defendant and said motion is made upon the grounds:

That the second count of the indictment herein does not state facts sufficient to constitute a public offense against this defendant.

2. That the whole record and evidence in this case fails to establish any violation by the defendant of a conspiracy to violate the Act of Congress of February 9th 1909.

Wm. HOFF COOK,
Attorney for Defendant.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [108]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion in Arrest of Judgment of Defendant Mon Hing.

Now comes the defendant herein, MON HING, and moves the court that it arrest its judgment upon the verdict of guilt herein, and that no judgment be rendered by the Court upon the verdict of "guilty as charged in the indictment," heretofore found against this defendant, and said motion is made upon the grounds:

That the second count of the indictment herein does not state facts sufficient to constitute a public offense against this defendant.

2. That the whole record and evidence in this case fails to establish any violation by the defendant of a conspiracy to violate the Act of Congress of February 9th, 1909.

WM. HOFF COOK,
Attorney for Defendant.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [109]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

No. 5441.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Motion in Arrest of Judgment of Defendant Yt Yee.

Now comes the defendant herein YT YEE and moves the Court that it arrest its judgment upon the verdict of guilt herein, and that no judgment be rendered by the Court upon the verdict of "guilty as charged in the indictment," heretofore found against this defendant, and said motion is made upon the grounds:

That the second count of the indictment herein does not state facts sufficient to constitute a public offense against this defendant.

2. That the whole record and evidence in this case fails to establish any violation by the defendant of a conspiracy to violate the Act of Congress of February 9th, 1909.

WM. HOFF COOK,
Attorney for Defendant.

[Endorsed]: Filed Jun. 25, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [110]

At a stated term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Court-room Thereof, in the City and County of San Francisco, State of California, on Thursday the 25th day of June, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: the Honorable M. T. DOOLING, Judge.

No. 5441.

UNITED STATES OF AMERICA,

vs.

JUNG QUEY et al.

Order Overruling Motion for New Trial, etc.

In this case, defendants Jung Quey, Li Cheung, Mon Hing and Jt Yee were present in open court with their attorney, Wm. Hoff Cook, Esq. John W. Preston, Esq., appeared on behalf of the United States, and thereupon, the defendants were called for the pronouncing of judgments upon the verdicts of guilty heretofore rendered herein against them. The Court then asked if they had any legal cause to show why judgment should not be pronounced against them, and in response thereto, Mr. Cook presented and filed, as to each defendant, motion for a new trial, and after hearing counsel for both parties, the Court ordered that said motion be, and the same is hereby, denied. Mr. Cook then presented and filed, as to each defendant, motion in arrest of judgment, which was likewise [111] argued and ordered overruled by the Court, to which rulings of the Court Mr. Cook then and there entered an exception. Thereupon, the Court proceeded to pronounce judgments upon said defendants and ordered that defendant Jung Quey, for the offense of which he stands convicted, be imprisoned for the period of one year, and that he pay a fine in the sum of \$1500, and that in default of the payment thereof, he be further imprisoned until said fine is paid or he is otherwise discharged by due process of law; that Li Cheung, for the offense of which he stands convicted, be imprisoned for the period of eight months; that Mon Hing, for the offense of which he stands convicted, be imprisoned for the period of ten months; and that

defendant Jt Yee, for the offense of which he stands convicted, be imprisoned for the period of six months. Further ordered that said judgments of imprisonment be executed upon said defendants by imprisonment in the County Jail of Alameda County, State of California, and that said defendants be committed to the custody of the United States Marshal for this district for the execution of said judgments and that commitments issue accordingly. Thereupon, on motion of Mr. Cook, the Court ordered that the execution of said judgments be, and the same are hereby, stayed for a period of one day, and that said defendants be permitted to go at large, pending the expiration of said stay, on the bonds heretofore given herein for their appearance. [112]

In the District Court of the United States, for the Northern District of California, First Division.

No. 5441.

THE UNITED STATES OF AMERICA,

vs.

JUNG QUEY, alias SAM KEE, LI CHEUNG,
MON HING, and JT YEE.

**Judgment on Verdict of not Guilty on the First
Count of the Indictment, and Guilty on the
Second Count of the Indictment.**

Convicted of conspiring to receive and conceal opium prepared for smoking purposes, knowing the same to have been imported contrary to law.

Now on this 25th day of June, A. D. 1914, the de-

fendants, in their own proper persons and with their counsel, Wm. Hoff Cook, Esq., being present in open Court, comes John W. Preston, Esq., United States Attorney, and moves the Court that judgment be pronounced in this cause; whereupon the defendants were duly informed by the Court of the nature of the indictment filed on the 6th day of February, A. D. 1914, charging them with the crime of a violation of Section 37, of the Criminal Code of the U. S. and Act of February 9th, 1909, as amended, by the Act of January 17th, 1914; of their arraignment and plea of Not Guilty; of their trials and the verdict of the Jury on the 13th day of April, 1914, to wit: "We, the Jury, find Jung Quey, Li Cheung, Yik Fat, Mon Hing and Jt Yee, the defendants at the bar, Not Guilty on first Count." And the verdicts of the Jury on the 12th day of June, 1914, to wit: "We, the Jury, find Jung Quey, Li Cheung, Mon Hing and Jt Yee, the defendants at the bar Guilty on the second count of the Indictment herein." "We, the Jury, find for each of the defendants at the bar, upon his plea of former acquittal of conspiracy with Yik Fat alone." "We, the Jury, find for the defendants at the bar, upon their plea of former acquittal of the offenses charged in the first count of the Indictment." [113].

The defendants were then asked if they had any legal cause to show why judgment should not be pronounced against them, and no sufficient cause being shown or appearing to the Court, and the Court having denied a Motion for a New Trial, and a Motion in Arrest of Judgment; thereupon the Court rendered its judgment:

THAT WHEREAS, the said Jung Quey, alias Sam Kee, Li Cheung, Mon Hing and Jt. Yee, having been duly convicted in this court of the crime of conspiring to receive and conceal opium prepared for smoking purposes, knowing the same to have been imported contrary to law.

IT IS THEREFORE ORDERED AND ADJUDGED that the said Jung Quey alias Sam Kee be imprisoned in the Alameda County Jail, Alameda County, California, for the term of one year, and that he pay a fine of \$1500, and in default of the payment of said fine that he be further imprisoned until said fine be paid or until he be otherwise discharged by due course of law.

That the defendant Li Cheung be imprisoned in the Alameda County Jail, Alameda County, California, for the term of eight (8) months.

That the defendant Mon Hing be imprisoned in the Alameda County Jail, Alameda County, California, for the term of ten (10) months.

That the defendant Jt Yee be imprisoned in the Alameda County Jail, Alameda County, California, for the term of six (6) months.

JUDGMENT ENTERED this 25th day of June,
A. D. 1914.

WALTER B. MALING,
Clerk,
By C. W. Calbreath,
Deputy Clerk. [114]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY, alias SAM KEE, LI CHEUNG,
MON HING and YT YEE,

Defendants.

Petition for Writ of Error and Appeal.

Now come Jung Quey, alias Sam Kee, Li Cheung, Mon Hing and Yt Yee, the defendants in the above-entitled cause, and say that on or about the 12th day of June, 1914, these defendants were found guilty by a verdict of the jury of the offense set forth in the second count of the indictment in this cause and on or about the 19th day of June, 1914, this Court upon said verdict pronounced and rendered judgment against said defendants as follows, viz.: that said defendant Jung Quey, alias Sam Kee be imprisoned in the county jail of Alameda County for the term of one year, and that he pay a fine of \$1500.00; and that said defendant Mon Hing be imprisoned in the county jail of Alameda County for the term of ten months; and that said defendant Li Cheung be imprisoned in the county jail of Alameda County for the term of eight months; and that said defendant Yt Yee be imprisoned in the county jail of Alameda County for the term of six months,

in which said judgments and sentences, and the proceedings had prior thereto in this cause, certain errors were committed, to the prejudice of said defendants, all of which will more in detail [115] appear from the assignment of errors which is filed with this petition, and which will also appear from an additional assignment of errors to be filed upon the settlement of a bill of exceptions to be subsequently filed herein.

Wherefore said defendants pray that an appeal and writ of error may issue in this behalf out of the United States Circuit Court of Appeals, for the Ninth Circuit, for the correction of the errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the said Circuit Court of Appeals, together with a true copy of a bill of exceptions to be hereafter settled and allowed, that the same may be reviewed and corrected by said Circuit Court of Appeals:

And your petitioners further pray that such appeal and writ of error prayed for act as a superse-deas, and that the judgments and sentences to be reviewed be not executed pending the determination of said appeal and writ of error, and that the said defendants and petitioners be enlarged on bail pending the determination of said appeal and writ of error.

WM. HOFF COOK,
Attorney for Petitioners.

[Endorsed]: Filed Jul. 7, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [116]

*In the District Court of the United States, in and
for the Northern District of California, First
Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY, alias SAM KEE, LI CHEUNG,
MON HING and YT YEE,

Defendants.

Assignments of Error.

The defendants in the above-entitled action, and the plaintiffs in error, having petitioned for an order of the Court permitting them to procure a Writ of Error and Appeal, directed from the United States Circuit Court of Appeals for the Ninth Circuit, to the District Court of the United States for the Northern District of California, from the judgments and sentences made, pronounced and entered in said cause against said defendants, the petitioners herein, and in favor of the plaintiff, now make and file with their petition for such Writ of Error and Appeal, the following specifications as their Assignments of Error herein, upon which they will rely for the reversal of said judgment upon said Writ and Appeal; and they say that in the records and proceedings in the above-entitled cause, upon a hearing and determination thereof in the District Court of the United States for the Northern District of California, First Division, there is manifest error in this, to wit:

First. The Court erred in overruling the demur-

rers of the defendants and petitioners to the Second Count of the indictment in the cause; [117]

Second. The Court erred in overruling the demurrers of said defendants to the second count of said indictment, in determining and deciding that it was not necessary in said indictment to allege a scheme to use certain means for the purpose of effecting the alleged conspiracy;

Third. The Court erred in overruling the demurrers of said defendants to the second count of said indictment, and in holding that said second count of said indictment alleged facts sufficient to constitute a conspiracy to violate a law of the United States.

Fourth. The Court erred in overruling the demurrers of defendants to the second count of said indictment, and in holding that a conspiracy to conceal and receive opium after importation was a public offense.

Fifth. The Court erred in overruling the demurrers of defendants to the second count of said indictment, and in holding that the Act of Congress of February 9, 1909, as amended January 17, 1914, was constitutional in that portion thereof which made it unlawful to receive or conceal opium prepared for smoking purposes after its importation.

Sixth. The Court erred in overruling the demurrers of the defendants to the second count of said indictment, and in holding that said second count stated facts sufficient to constitute a public offense, without alleging any conspiracy to receive or conceal such opium in the District of California after its unlawful importation.

Seventh. The Court erred in the matter of the impaneling of the jury in the following particulars, viz.: that these defendants had previously been tried upon the second count of the indictment herein and the jury upon said trial disagreed, and that upon the impanelment of the jury upon such first trial, that [118] four men after their examination as to their qualification to act as such jurors upon said first trial were excused under peremptory challenges exercised against each of them by these defendants; and that before the second trial of said cause was commenced the defendants requested that the names of said four persons who were thus challenged by the defendants upon said first trial be not placed in the jury-box to be drawn as prospective jurors upon the impanelment of the jury upon such second trial; that the Court overruled the objections of defendants to the placing of said four names in the jury-box and permitted them to be placed therein and said four men were again drawn upon the impanelment of the jury in the second trial, and the defendants were necessarily again compelled to exercise similar peremptory challenges upon three of said men and were obliged to keep one of said men upon such second trial as a juror; and thus in effect the defendants were only allowed the free use and exercise of six peremptory challenges upon said second trial, instead of ten peremptory challenges as are allowed by law;

Eighth. The Court erred in admitting in evidence over the objections of defendants, Government's Exhibit No. 1, which was a paper in Chinese characters which was translated by the Chinese interpreter and

witness Yung Quey, which was testified by the witness Matthai as having been given to him by the defendant Li Cheung; and such exhibit was objected to by defendants as being irrelevant, incompetent and immaterial and no proper foundation having been laid for its admission.

Ninth. The Court erred in admitting in evidence Government's Exhibit 2, over defendants' objections, which exhibit was a purported translation of a paper which the witness Head testified was given to him by the witness Matthai, and which was in Chinese [119]. characters, and which, after the purported translation thereof had been made, the witness Head testified he again gave to the witness Matthai, and which paper the witness Matthai testified that he subsequently gave to the defendant Jung Quey; there was no testimony that such paper was the paper given by Li Cheung to the witness Matthai; and defendants objected to the admission in evidence of such paper upon the grounds that the same was irrelevant, immaterial and incompetent and that no proper foundation had been laid for its admission;

Tenth. The Court erred in admitting in evidence Government's Exhibit No. 3, over defendants' objections, which exhibit was a purported translation of a paper which the witness Matthai testified that he received from the defendant Jung Quey, and which he also testified was subsequently delivered to Yik Fat, and there was no evidence that said paper was ever delivered to the defendant Li Cheung, or to any other defendant; and the witness Matthai testified that he delivered said paper, after he received it from the defendant Jung Quey, too the wit-

ness Head; and the witness Head testified that he had it translated, and that the translation thereof was set forth in Exhibit No. 3, and that after such translation had been made that he delivered the original paper to the witness Matthai, and the witness Matthai testified that he gave it to Ah Fat, and that he told Ah Fat to deliver it to Yik Fat; and defendants objected to the introduction of this exhibit in evidence upon the grounds that the same was irrelevant, immaterial and incompetent, and that no proper foundation had been laid for its admission;

Eleventh. The Court erred in admitting in evidence over defendants' objections, Government's Exhibit No. 9; said exhibit being a receipt from a photographer for \$4.00 for photographs taken [120] of the defendants Mon Hing and Yt Lee at the time of their arrest upon a commissioner's warrant, which exhibit the witness Head testified that he found upon the person of the defendant Jung Quey at the time he arrested him; and said witness Head testified that he had no warrant for the arrest of said Jung Quey at said time and that he was not a Deputy United States Marshal; and a previous demand had been made before the trial upon the District Attorney for the return of all papers and documents taken from the possession of Jung Quey; said objection was upon the ground that said exhibit and evidence was irrelevant, incompetent and immaterial and that no proper foundation had been laid for its admission.

Twelfth. That the Court erred in overruling the objections of defendants to the testimony of the witnesses Matthai and Kircheisen as to conversations

had by them with the defendant Li Cheung in relation to taking opium ashore, at times long prior to the arrival of the steamer "China" in San Francisco about December 28, 1913; said objections were made upon the grounds that such testimony was irrelevant, incompetent and immaterial.

Thirteenth. The Court erred in refusing to give the jury the following instructions requested by the defendants.

"I instruct you that if you find from the evidence that the quartermaster Matthai took any opium prepared for smoking purposes from the Steamship 'China' on January 30th, 1914, while she was in the port of San Francisco, and that he did so with the permission of the Government, through its duly authorized officers, then I instruct you that such opium was not being unlawfully transported after its importation, and the receipt of such opium by any person thereafter, by any person, from said quartermaster, was not an unlawful act, and therefore cannot be considered by [121] you as an unlawful act done in pursuance of the conspiracy, as alleged in the indictment, and such testimony cannot be considered by you as establishing in any degree the guilt of any of the defendants of the conspiracy as alleged in the indictment."

Fourteenth. The Court erred in refusing to give the following instruction requested by defendant:

"A conspiracy has these elements; First, an object to be accomplished, which must be the commission of a public offense against the United States, and not against the laws of any particular State; Second, a plan or scheme embodying means to ac-

comply with the object; Third, an agreement or understanding between two or more persons whereby they become definitely committed to co-operate for the accomplishment of the object by the means embodied in the scheme or by effectual means; and Fourth, an overt act by one or more of the conspirators in furtherance of and to effect the object of the conspiracy.”

Fifteenth. The Court erred in holding and deciding that the evidence was sufficient to sustain a conviction of any of the defendants, in this, that the five skins which were testified to by the different witnesses as containing opium prepared for smoking purposes were never offered or admitted in evidence, and therefore all of the evidence in relation thereto was irrelevant, and immaterial and incompetent and insufficient to sustain the proof of any of the overt acts alleged in the second count of the indictment;

Sixteenth. The Court erred in denying the motions of the defendants for new trial herein;

Seventeenth. The Court erred in denying the motions of the defendants in arrest of the several judgments herein.

WM. HOFF COOK,
Attorney for Defendant and Plaintiffs in Error. [122]

[Endorsed]: Filed Jul. 7, 1914. W. B. Maling,
Clerk. By Lyle S. Morris, Deputy Clerk. [123]

*In the District Court of the United States, in and for
the Northern District of California, First Di-
vision.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY, Alias SAM KEE, LI CHEUNG,
MON HING and YT YEE,

Defendants.

Additional Assignments of Error.

With the permission of the Court, the plaintiffs in error, herewith present and file the following additional assignments of error, upon the appeal heretofore allowed herein, and they specify the following as additional errors upon which they will reply for the reversal of said judgment upon the Writ of Error and appeal herein; and they say that in the records and proceedings, in the above-entitled cause, upon a hearing and determination thereof in the District Court of the United States, for the Northern District of California, First Division, there is manifest error in this, to wit:

First. The Court erred in overruling the objections of defendants to the following questions asked of the witness L. L. Pokorney, viz.:

“Q. Do you remember on or about the 3d day of February, 1914, of having in this building made photographs of any Chinese?”

“Q. I will ask you whether or not you recognize

any of the Chinese in the room whose photographs you made at that time?"

"Q. Do you remember at whose request you made these photographs?" [124]

Second. The Court erred in overruling the objections made on behalf of the defendants when the witness Bernice E. Jennings was called as a witness on behalf of the plaintiff, which objection was made in the following language: "Mr. Cook. At this time I desire to object to any evidence in this case under the indictment on the part of the prosecution on the ground that the offense as charged, of the conspiracy to conceal opium, after importation, is an unconstitutional act, and not an offense within the Federal jurisdiction."

Third. The Court erred in overruling the objections of the defendants to the following questions asked of the witness H. Matthai, whose was called on behalf of plaintiff, viz.:

"Q. What kind of message did you receive?"

"Q. Had there been any talk between you and this defendant Li Cheung, or between Li Cheung and any other person in your presence before the steamer 'China' reached San Francisco?"

"Q. What was the nature of the conversation?"

Fourth. The Court erred in denying the following motion made on behalf of the defendants, viz.:

"Mr. Cook. At this time I move to strike out, if the Court please, the testimony of this witness with relation to any of the overt acts, and in relation to the first and second overt acts alleged in the indictment, on the ground that it is irrelevant, incompetent

and immaterial, and on the ground that it appears affirmatively in evidence in this case that Yick Fat was acquitted by a jury in this case of any conspiracy, combination or agreement as alleged in the second count of the indictment; and that all of these defendants were acquitted of the offense charged in the first count of conspiracy to import this opium [125] into the United States; and that as to the second count of the indictment, as to the overt act the testimony of this witness if offered of the allegation of the indictment that it was in furtherance the conspiracy as alleged and to effect and accomplish the object thereof, that the said Li Cheung and Yick Fat, on the 30th day of January, 1914, on the steamship 'China' then and there lying and being in the Port of San Francisco, prepared seven skins or bladders containing fourteen pounds of opium prepared for smoking purposes which said opium had theretofore been brought from some foreign port or place to the Grand Jurors aforesaid, unknown, contrary to law, for the purpose of causing the same to be delivered to the said Jung Quey, alias Sam Kee; and the second act alleged in pursuance of said conspiracy, that Li Cheung and Yick Fat on the same day, at the same time and place, delivered seven skins or bladders containing fourteen pounds of opium to one Matthai, a quartermaster on the steamship 'China,' I submit, under the evidence here there is no conspiracy whatever proven between Sam Kee or Mon Hing at the time any one of these acts testified to by this witness, nor as to any fact alleged as to these overt acts. That whatever was done there if done at all, was done

in pursuance of a conspiracy solely between Li Cheung and Yick Fat, and the jury have found that no such conspiracy existed by reason of acquitting Yick Fat."

Fifth. The Court erred in overruling the objections of defendants to the following questions asked of the witness Joseph Head who was called on behalf of plaintiff, viz.:

"Q. I show you this paper, and will ask you whether or not you found that on Sam Kee's person at the time he was arrested?" [126]

"Q. I will ask you whether or not at that time you made the arrest, you found on the person of the defendant Sam Kee the paper I herewith show you?"

"Q. How did it compare in appearance, handwriting and otherwise, with the paper just introduced in evidence here as having been found on the person of Sam Kee?"

"Q. What is the value of that kind of opium per skin, in the month of February?"

And the Court also erred during the examination of said witness in admitting in evidence, over the objection of defendants, a certain slip of paper having written thereon "Kearney 5484," which was marked "United States Exhibit No. 4."

And the Court also erred, during the examination of said witness, over the objections of defendants, in admitting in evidence a suitcase and rags, which were marked "U. S. Exhibit 7."

Sixth. The Court erred in admitting in evidence, upon the examination of Yung Kay, who was called as a witness for plaintiff of a certain translation of a

paper, purporting to have been translated by said witness, which reads as follows, viz.: “Jung Quen, Dear Uncle: I am sending an American of the Steamer to bring this paper. Please consult with this man when you see him and the paper and decide how the goods to be delivered and received. Tomorrow I will send you the goods by this man. By so doing it will not be disappointed. Upon receipt of this note, please send me words by this man, and we will know to be you by seeing the proof. Your nephew, You Ock (secret) from S. S. China.”

And the Court also erred, during the examination of said [127] witness, in admitting in evidence, over defendants’ objections, another purported translation made by said witness, which read as follows, viz.: “To Yik Fat: Your letter has been received. From Jung Quey.”

And the Court also erred, during the examination of said witness in permitting the following question, and answer, over defendants’ objection, viz.:

“Mr. Preston.—Q. I show you another paper, heretofore marked for identification as exhibit 4 across the back, on which are numerous black lines, which paper appears to be in Chinese characters. Will you kindly interpret that in English now.

Witness reading. I now send a man to bring goods, 28 cans upon receipt of same pay the bearer \$196.00. Answer immediately and the man bring it back tomorrow. Please come and talk together. From Yee Ock.”

Seventh. The Court erred in overruling the objections of defendants to the following question

asked of the witness A. V. Kirchisen, called as a witness for plaintiff, viz.:

“Where was it?” (Said question referring to an alleged conversation in October or November, 1913.)

“Q. Had you or not made known to the customs officers any fact in connection with Li Cheung before you arrived on this last trip?”

And the Court erred in admitting in evidence, over defendants’ objection, the testimony of said witness in relation to conversations had with Li Cheung, in relation to matters not alleged in the indictment.

Eighth. The Court erred in overruling the following questions asked upon the cross-examination of D. F. Belden, [128] who was called as a witness on behalf of defendants:

“Q. I will ask you if it is not a fact that he was in the opium in Nevada?”

“Q. Is it not a part of his reputation that opium has been found in his room time and time again?”

“Q. Is it not a part of his general reputation that he has sent for customs inspectors and other people and tried to enter into unlawful combinations with them for the purpose of getting opium?”

Ninth. The Court erred in overruling defendants’ objections to the following questions asked of the witness Thomas R. Harrison, who was called as a witness for plaintiff, viz.:

“Q. Have you ever had any talk with either of these quartermasters Matthai or Kirchisen prior to the incoming of the steamer ‘China’ in January of this year?”

“Q. What kind of opium was it?”

And the Court also erred in sustaining the objec-

tions to the following questions asked by defendants' counsel of the same witness on cross-examination viz.:

"Q. What did you search this Chinaman for that came out of the saloon at 20th and Kentucky Streets?"

"Q. In what direction did that Chinaman go?"

"Q. Is it not a fact that you thought this Chinaman had some of the opium?"

Tenth. The Court erred in overruling defendants' objections to the following questions asked of Yick Fat, called as a witness for the defendants, on the cross-examination of said witness, viz.:

"Q. Did you say at that time that you ever saw this opium?"

"Q. Didn't you swear at the last trial you did not see this [129] opium, and did not know anything about it, and never saw anybody with opium?"

"Q. Didn't you swear at the last trial you did not know anything about opium, never hear of it, and never saw any opium?"

"Q. Why, didn't you swear about these sausages at the last trial?"

Eleventh. The Court erred in sustaining the objections to the following questions asked by defendant's counsel of the witness James W. Finn, called as a witness on behalf of defendants.

"Q. You know his general reputation in a business way?"

"Q. Didn't you make any investigation about him as the credit man of your firm?"

"Q. Have you ever heard his reputation discussed?"

Twelfth. The Court erred in overruling the objections of defendants to the following questions asked of the witness John Toland, viz.:

“Q. What kind of subjects have you discussed with him?”

“Q. What kind of English can he talk, if any?”

WM. HOFF COOK.

Attorney for Defendants and Plaintiffs in Error.

[Endorsed]: Lodged Aug. 6, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [130]

*In the District Court of the United States in and for
the Northern District of California, First Di-
vision.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY *alias* Sam Kee, LI CHEUNG, MON
HING and YT YEE,

Defendants.

**Order Allowing Writ of Error and Appeal, and to
Operate as a Supersedeas.**

Now, on this 7th day of July, 1914, come the defendants Jung Quey, *alias* Sam Kee, Li Cheung, Mon Hing and Yt Yee, by Wm. Hoff Cook, Esq., of counsel, and present to the Court a petition praying for the allowance of a writ of error and appeal in the above-entitled cause, from the United States Circuit Court of Appeal, Ninth Circuit, to this court, and

also present with said petition their assignment of errors, and move the Court for an order allowing said writ of error and appeal, and fixing the amount of bond to be given by said petitioners thereon, and asking that such bond shall operate as a supersedeas bond;

Whereupon, it is ordered that a writ of error and appeal in this cause be, and the same is, hereby allowed as prayed for in said petition, and that said Jung Quey, *alias* Sam Kee, give a bond in the sum of \$3,000.00; and that the petitioners Li Cheung, Mon Hing and Yt Yee each give a bond in the sum of \$2,000.00, as provided by law, which said bonds shall operate as supersedeas bonds, and stay the execution of each of the judgments against each of said petitioners, and that said petitioners also give and file a joint bond in the sum of \$500.00 for costs on [131] such writ of error and appeal.

M. T. DOOLING,

District Judge.

[Endorsed]: Filed Jul. 7, 1914. W. B. Maling, Clerk. By Lyle S. Morris, Deputy Clerk. [132]

At a Stated Term of the District Court of the United States of America, for the Northern District of California, First Division, held at the Courtroom thereof, in the City and County of San Francisco, State of California, on Tuesday the 7th day of July, in the year of our Lord One Thousand Nine Hundred and Fourteen. Present: The Honorable M. T. DOOLING, Judge.

No. 5441.

UNITED STATES OF AMERICA,

vs.

JUNG QUEY, LI CHEUNG, MON HING and JT
YEE,**Order Fixing Bail of Defendants, etc.**

In this case, on motion of Wm. H. Cook, Esq., Attorney for Defendants, and presenting Petition for Appeal from the judgment of this Court, and Assignment of Errors, the Court signed an order allowing the Writ of Error and Appeal herein, and ordered that the bonds of defendants pending the determination of said appeals be, and the same are hereby fixed as follows: As to Jung Quey, \$3,000, and as to Li Cheung, Mon Hing and Jt Yee, in the sum of \$2,000 each, and that said appellants give a Cost Bond on Appeal, jointly, in the sum of \$500. Further ordered that defendants have thirty days from this date within which to prepare and serve the proposed Bill of Exceptions herein on Appeal, and that upon the settlement thereof, defendants may file Additional Assignment of Errors. [133]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS,
That we, Jung Quey, alias Sam Kee, Li Cheung and Mon Hing and Jt Yee as principals, and Illinois Surety Company, a corporation, as surety are held and firmly bound unto the United States of America in the full and just sum of five hundred dollars, to be paid to the said United States of America certain attorney, executors, administrators or assigns; to

which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 8th day of July in the year of our Lord, One Thousand, Nine Hundred and Fourteen.

WHEREAS, lately at a District Court of the United States for the Northern District of California, First Division, in a suit depending in said Court, between the United States of America and Jung Quey, Li Cheung, Mon Hing and Jt Yee, a judgment was rendered against the said Jung Quey, Li Cheung, Mon Hing and Jt Yee and the said Jung Quey, Li Cheung, Mon Hing and Jt Yee having obtained from said Court a writ of error and appeal to reverse judgment in the aforesaid suit, and a citation directed to the said United States of America citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California.

NOW, THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the said Jung Quey, Li Cheung, Mon Hing and Jt Yee shall prosecute their writ of error to effect, and answer all damages and costs if they fail to make their plea good, then the above [134] obligation to be void; else to remain in full force and virtue.

Acknowledged before me the day of year first
above written.

(Chinese Character)

(JUNG QUEY) [Seal]

(Chinese Character)

(LI CHEUNG) [Seal]

MON HING, [Seal]

JT YEE,

[Seal]

FRANCIS KRULL.

ILLINOIS SURETY COMPANY. [Seal]

By Harold Parsons,

Its Attorney in Fact.

Form of bond and sufficiency of sureties approved.

M. A. THOMAS,

Assistant U. S. Atty.

[Endorsed]: Filed Jul. 8, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [135]

*In the United States District Court, in and for the
Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

JUNG QUEY et al.,

Defendants.

Order Extending Time to Docket Case.

Good cause appearing therefor by reason of un-
avoidable delay in the matter of the settlement of
plaintiffs proposed amendments to defendants pro-
posed Bill of Exceptions herein, it is hereby ordered

that the defendants may have Thirty (30) days further time within which to lodge the record on appeal herein with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: October 20, 1914.

M. T. DOOLING,
District Judge.

[Endorsed]: Filed Oct. 20, 1914. W. B. Maling,
Clerk. By C. W. Calbreath, Deputy Clerk. [136]

*In the United States District Court, in and for the
Northern District of California, First Division.*

No. 5441.

THE UNITED STATES OF AMERICA,
Plaintiff,

vs.

JUNG QUEY et al.,
Defendants.

**Stipulation (and Order Extending Time to Docket
Case).**

It is hereby stipulated by and between the parties hereto that the defendants may have additional time to and including the 19th day of December, 1914, within which to lodge the record on appeal herein with the Clerk of the United States Circuit Court

of Appeals for the Ninth Circuit.

JNO. W. PRESTON,

Attorney for Plaintiff.

WM. HOFF COOK,

J. C. CAMPBELL,

WEAVER, SHELTON & LEVY,

Attorneys for Defendants.

So Ordered:

WM. C. VAN FLEET,

District Judge.

[Endorsed]: Filed Nov. 14, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [137]

Certificate of Clerk to Transcript on Writ of Error.

I, Walter B. Maling, Clerk of the District Court of the United States of America for the Northern District of California, do hereby certify that the foregoing 137 pages, numbered from 1 to 137, inclusive, contain a full, true, and correct Transcript of certain records and proceedings, in the case of the United States of America vs. Jung Quey et al., number 5441, as the same now remain on file and of record in the office of the Clerk of said District Court; said Transcript having been prepared pursuant to and in accordance with "Praecipe" (copy of which is embodied in this Transcript) and the instructions of Wm. Hoff Cook, Esquire, Attorney for Defendants and Appellants herein.

I further certify that the costs for preparing and certifying the foregoing Transcript on Writ of Error is the sum of Seventy Six Dollars and Forty Cents (\$76.40) and that the same has been paid to me by the Attorney for the Appellants herein.

Annexed hereto is the Original Citation on Writ of Error and the Original Writ of Error with the return of the said District Court to said Writ of Error attached thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 18 day of December, A. D. 1914.

[Seal]

WALTER B. MALING,
Clerk.

By C. W. CALBREATH,
Deputy Clerk.

C.M.T.

[Ten Cents Internal Revenue Stamp, Canceled
Dec. 18, 1914. C. W. C.] [138]

Writ of Error.

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Northern District of California, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Jung Quey, alias Sam Kee, Yick Fat, Li Cheung and Jt Yee, vs. United States of America, Defendant in Error, a manifest error hath happened, to the great damage of the said Jung Quey, alias Sam Kee, Li Cheung, Mon Hing and Jt Yee, Plaintiff in Error, as by their complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do com-

mand you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit, Court of Appeals for the Ninth Circuit together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 2d day of December, in the year of our Lord one thousand, nine hundred and fourteen.

W. B. MALING,
Clerk of the United States District Court, Northern
District of California.

By C. W. Calbreath,
Deputy.

Allowed by:

M. T. DOOLING,
U. S. Dist. Judge. [139]

[Endorsed]: No. 5441. United States District Court, for the Northern District of California. Jung Quey et al., Plaintiffs in Error, vs. United States of America, Defendant in Error. Writ of Error. Filed Dec. 2, 1914. W. B. Maling, Clerk. By C. W. Calbreath, Deputy Clerk. [140]

Return to Writ of Error.

The Answer of the Judges of the District Court of the United States of America, for the Northern District of California, to the within Writ of Error.

As within we are commanded, we certify under the seal of our said District Court, in a certain schedule to this writ annexed, the record and all proceedings of the plaint whereof mention is within made, with all things touching the same, to the United States Circuit Court of Appeals, for the Ninth Circuit, within mentioned, at the day and place within contained.

We further certify that a copy of this Writ was on the 2d day of December, A. D. 1914, duly lodged in the case in this court for the within named defendants in error.

By the Court:

[Seal]

WALTER B. MALING,

United States District Court, Northern District of California.

By C. W. CALBREATH,

Deputy Clerk.

[Ten Cents Internal Revenue Stamp. Canceled
Dec. 18, 1914. C. W. C.] [141]

Citation on Writ of Error.

United States of America,—ss.

The President of the United States, to United States of America and John W. Preston, Esq., United States for the Northern District of California,
Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for

the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, wherein Jung Quey, alias Sam Kee, Li Cheung, Mon Hing and Yt Yee, are plaintiffs in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable M. T. DOOLING, United States District Judge for the Northern District of California, this 25 day of September, A. D. 1914.

M. T. DOOLING,

United States District Judge. [142]

Due service of the within citation is hereby admitted this 25th day of September, 1914.

JNO. W. PRESTON,

United States Attorney for the Northern District of California.

[Endorsed]: No. 2527. United States Circuit Court of Appeals for the Ninth Circuit. Jung Quey, *alias* Sam Kee, Li Cheung, Mon Hing, and Jt Yee, Plaintiffs in Error, vs. United States of America, Defendant in Error. Transcript of Record.

Upon Writ of Error to the United States District Court of the Northern District of California, First Division.

Filed December 18, 1914.

FRANK D. MONCKTON,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

